

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.331 of 2025

Harendra Pandey, son of Thakur Pandey, Resident of village- Nagri, Police Station-Charpokhar, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. Dadan Chaudhary, son of Jugeshwar Chaudhary, R/o village- Karwa, Police Station- Arrah Mofasil, District- Bhojpur.
2. Lalji Chaudhari, son of Jugeshwar Chaudhary, R/o village- Karwa, Police Station- Arrah Mofasil, District- Bhojpur
3. Langari Kunwar @ Ratilar Kunwar, widow of Sri Bhagwan Pandey, Resident of Village and Post Office- Nagari, P.S- Charpokhari, District- Bhojpur.
4. Pappu Pandey, @ Sanjay Kr. Pandey, Son of Sri Bhagwan Pandey, Resident of Village and Post Office- Nagari, P.S-Charpokhari, District- Bhojpur.
5. Dularo Devi, widow of late Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S- Charpokhari, District- Bhojpur.
6. Janeshwar Pandey, Son of Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S- Charpokhari, District- Bhojpur.
7. Janardan Pandey, son of Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S- Charpokhari, District- Bhojpur.
8. Sailendra Pandey, son of Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S- Charpokhari, District- Bhojpur.
9. Dhamendra Pandey, son of Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S- Charpokhari, District- Bhojpur.
10. Nayanjharo Devi, son of Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S- Charpokhari, District- Bhojpur.
11. Laljhari Devi, son of Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S- Charpokhari, District- Bhojpur.
12. Kalawati Devi, son of Ram Sidh Pandey, Resident of Village and Post Office Nagari, P.S-Charpokhari, District- Bhojpur
13. Madan Pandey, Son of Thakur Pandey, son of Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S- Piro, Charpokhari, District- Bhojpur.
14. Kailash Pandey, Son of Thakur Pandey, Son of Ram Sidh Pandey, Resident of Village and Post Office- Nagari, P.S.- Piro, Charpokhari, District- Bhojpur.
15. Rita Devi, Wife of Lalji Chaudhari, R/o Village- Karwa, Police Station- Ara, District- Bhojpur at Ara.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Advocate
For the Respondent/s : Mr.



CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 26-06-2025

The record taken up on mentioning being made on behalf of the petitioner.

2. Heard learned counsel for the petitioner and I intend to dispose of the instant petition at the stage of admission itself.

3. The petitioner is aggrieved by the order dated 27.11.2024 passed by the learned District Judge-II, Bhojpur at Ara in Title Appeal No.09 of 2020 whereby and whereunder the application filed by the respondent no.15 under Order 1 Rule 10 (2) of the Code of Civil Procedure (hereinafter referred to as 'the Code') has been allowed and intervener was made a party defendant.

4. The learned counsel for the petitioner submits that the petitioner is the appellant before the learned first appellate court and the respondent nos. 1 to 14 are also respondents before the learned first appellate court. The intervener is the wife of respondent no.2, namely Lalji Chaudhary. The intervener/respondent no.15 filed an application for her impleadment claiming that her husband had been traceless for 15-20 years and the learned first appellate court allowed her



impleadment in the title appeal. The said order is wrong and illegal as the respondent no.15 did not produce any declaration from any competent court about civil death of her husband. When the husband is already party and he has not died, his wife has got no right to get herself impleaded in the title appeal. The learned counsel further submits that moreover, the intervener claimed that her husband had been traceless for 15-20 years, but she did not take any steps to get herself impleaded in the title suit before the learned trial court. If the husband of the intervener is legally alive, the intervener has got no legal right in the suit property and she could not be made a party. Therefore, the impugned order is not sustainable and the same needs to be set aside.

5. Perused the record.

6. The short question involved in the present *lis* is whether the respondent no. 15 has rightly been impleaded as party defendant in the title appeal filed by the petitioner.

7. Order 1 Rule 10 (2) of the Code provides as under:-

“10 (2). Court may strike out or add parties –
The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose



presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

8. A bare reading of the aforesaid provision shows the court may at any stage of the proceeding can or add or delete party to a suit if it feels presence of such party might be necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the suit.

9. The Hon’ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***, reported in ***(2010) 7 SCC 417*** has held that a necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. On the other hand, a proper party is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. It has been further held that if a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.



It has further been held that Order 1 Rule 10 (2) CPC is not about the right of a non-party to be impleaded as a party, but is about the judicial discretion of the court to strike out or add parties at any stage of a proceeding.

10. The Hon'ble Supreme Court in the case of ***Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)***, reported in ***(2007) 10 SCC 82***, has held that a party having a semblance of interest in the suit property could be impleaded as a party.

11. From the facts of the present case, it appears that the intervener filed an application claiming that the appellant and the respondent no. 1 had been compromising the matter and on inspection by her counsel, the said fact was found to be true. She has further claimed that her husband had been traceless for 15-20 years. She has further claimed that when the Title Suit No. 02/1984 was filed in the year 1984, her husband was minor and he was made a party during his minority. The Title Suit No. 02/1984 was decided on 03.01.2020 and preliminary decree was prepared on 08.01.2020. The intervener has further claimed that the appellant did not make her party in the appeal though in the grounds of appeal, the appellant has mentioned that Lalji Chaudhary had died more than 15 years ago. Therefore, the intervener is his only heir. But the appellant deliberately made a



dead person party. The intervener has also filed a case for preparation of final decree and the appellant is also a party there. The intervener has further claimed that the respondent no.1, namely Dadan Chaudhary has come in collusion with the appellant and they want to grab the share of the intervener and, towards this end, they had filed a compromise petition.

12. Now the objection of the petitioner to the impleadment is on the ground that the intervener did not produce any declaration about civil death of her husband and though her husband became traceless, she did not get herself impleaded in the title suit. Both the objections are misconceived. When the appellant has himself taken a ground that the husband of the intervener was dead and death occurred 15 years back, the appellant is not allowed to approbate and reprobate at the same time. Moreover, making the said person as a party when there is specific claim in the grounds that the said person was dead, shows dishonest intention of the appellant and every person, who comes before the court of law, is expected to come with clean hands.

13. So far as the objection to the impleadment of the intervener on the ground that she did not choose to make herself party in title suit is concerned, that may be due to a number of reasons. If the brother of her husband has been there and



contesting the suit and she has no apprehension of her right getting affected or her interest being endangered or loss of share in the suit property due to the acts of her brother-in-law and if she was satisfied with the conduct of case by him, she did not have any occasion to get herself impleaded. But when there is an apprehension that her interest may adversely be affected by the acts of her brother-in-law/respondent no.1, then threat to her interest appears to be real and she is within her right to claim impleadment.

14. In the light of discussion made here-in-above, I have no hesitation in holding that the learned first appellate court has not committed any illegality or irregularity and there appears no error of jurisdiction so as to interfere with the impugned order and hence, the impugned order dated 27.11.2024 passed by learned District Judge-II, Bhojpur at Ara in Title Appeal No. 09 of 2020 is affirmed.

15. As a result, the instant petition stands dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2025
Transmission Date	NA

