

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.739 of 2016**

Md. Tajuddin son of late Sarfuddin, Resident of Mohalla- Gudari Bazar,
Salapatganj, P.S. Bhagwan Bazar, District- Saran.

... .. Petitioner/s

Versus

1. Wahidul Haque @ Bachnu son of Majirul Haque.
2. Aftab Alam, son of Md. Kalim.
3. Nasruddin Kureshi, son of Najmuddin Kureshi.
4. Samsher Ali son of Taki Mian.
5. Md. Risad son of Md. Kalim.
6. Salauddin Kureshi alias Nanhki son of Yasin Kureshi.
7. Azad Kureshi, son of Kharaque Kureshi. All Resident of Village- Gudari Bazar Salapatganj, P.S. Bhagwan Bazar, District- Saran.
8. Abdul Rahim son of Late Tahir Hussain, Resident of Village- Brahmpur, P.O Chapra, P.S. Bhagwan Bazar, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Parth Gaurav, Advocate Ms. Manogya Singh, Advocate Mr. Aditya Pratap, Advocate Mr. G.R. Shahi, Advocate
For the Respondent/s	:	None

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 29-04-2025

Heard learned counsel for the petitioner.

2. Despite service of notice and filing of vakalatnama, there is no representation on behalf of respondent no. 8. Perusal of record shows even on the last date of hearing, none appeared for respondent no. 8. Hence, the matter has been put up for hearing.

3. The petitioner is aggrieved by the order dated



06.05.2016 passed by learned Sub Judge – 6th, Saran at Chapra in Title Suit No. 154 of 2015, whereby and whereunder the petition filed by respondent no. 8 under Order 1 Rule 10 of the Code of Civil Procedure has been allowed.

4. Learned counsel for the petitioner submits that the petitioner is plaintiff before the learned trial court and has filed the suit seeking declaration of his status as Mutwalli of the Milki Mosque and further declaration that defendant no. 2 is not Mutwalli. The plaintiff/petitioner has sought further relief that the defendant 1st set be restrained not to interfere in the management of the Mosque. The plaintiff/petitioner also sought relief against the defendant 2nd set for passing of the decree of eviction against defendant 2nd set from the shop of the suit property and also recovery of rent from the defendant 1st set. Learned counsel further submits that during the pendency of the suit, respondent no. 8 filed an application seeking impleadment on the ground that he has entered into an agreement of the shop in question by Mutwalli Sarfuddin on 29.08.1987 and he has been making payment of the enhanced rent Rs.150/- to Mutwalli Bahidul Haque. The intervenor has further submitted that the defendant no. 5 was wrongly impleaded as party as he was not a tenant in the shop and merely an employee of the



intervenor-respondent no. 8. Learned counsel further submits that from the relief sought by the plaintiff/petitioner it is apparent that the relief has been sought against the defendant 1st set. Learned counsel further submits that so far as relief of eviction against defendant 2nd set is concerned, if the decree is passed against defendant 2nd set it would not affect any right of the intervenor-respondent no. 8 as he was not a party. Learned counsel further submits that defendant no. 5 has been inducted as tenant after the intervenor-respondent no. 8 vacated the shop and intervenor-respondent no. 8 has not entered into the shop except, perhaps, after subletting by defendant no. 5 and even then the intervenor-respondent no. 8 cannot claim impleadment on this ground. However, the learned trial court did not take into consideration these facts and only on the ground that in the rejoinder, the plaintiff/petitioner mentioned the fact that perhaps defendant no. 2 sublet the shop to the intervenor-respondent no. 8, the order has been passed for impleadment. The said order is not sustainable as the intervenor-respondent no. 8 has no right to join as a party in the suit and for whatever he claimed in the subject matter of the suit, he could agitate the same in an independent proceeding and could not insist for being made a party in the suit filed by the plaintiff/petitioner. Learned counsel



further submits that it appears that the intervenor-respondent no. 8 has filed application for impleadment at the instance of defendant no. 2. The learned trial court erred on this point holding that the intervenor-respondent no. 8 appears to be in possession but there is no material to support such finding. Therefore, the order of learned trial court is erroneous as respondent no. 8 is neither necessary nor proper party. Thus, learned counsel submits that the impugned order may be set aside.

5. Having regard to the submission and on perusal of record, it appears that the impugned order has been passed by the learned trial court on the ground that the intervenor-respondent no. 8 appears to be in possession over the disputed property and for this reason, he has been found an interested party. I think this supposition does not appear to be correct on the basis of material on record. Further, if impleadment is allowed on this ground and in such manner, in a suit of such nature, then persons with vested interest may put up such persons seeking impleadment on the ground that they are in possession. The plaintiff has sought no relief against the intervenor-respondent and for a moment it is supposed that the intervenor-respondent no. 8 is in possession, no relief has been



sought against him and for this reason he has no occasion for being aggrieved. Even otherwise the suit has been filed for declaration of title as the main relief and if the plaintiff fails to prove his title, other reliefs would be of no consequence.

6. In the light of the aforesaid discussion, I am of the opinion that the respondent no, 8 is neither necessary nor proper party and his impleadment is wrong and for this reason, the impugned order cannot be sustained. Therefore, the impugned order is set aside and the petition is allowed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NA
CAV DATE	NA
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