

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.755 of 2024

1. Ashok Prasad Azad Son of Late Ram Lakhan Sao resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code 803302.
2. Kumar Vikki Anand, Son of Ashok Prasad Azad resident of Village Mor English, P.S. Mokama, District Patna, Bihar, Pin Code 803302.
3. Kumar Santanand, Son of Ashok Prasad Azad resident of Village Mor English, P.S. Mokama, District Patna, Bihar, Pin Code 803302.
4. Kumar Vivekanand, Son of Ashok Prasad Azad resident of Village Mor English, P.S. Mokama, District Patna, Bihar, Pin Code 803302.

... .. Petitioner/s

Versus

1. Sumitra Devi W/o Late Jagdish Sao, resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
2. Rajesh Sao, Son of Late Jagdish Sao, resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
3. Ganesh Sao, Son of Late Jagdish Sao, resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
4. Dinesh Sao, Son of Late Jagdish Sao, resident of Village Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
5. Rekha Devi, Wife of Raj Kumar Sao and Daughter of Late Jagdish Sao, resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
6. Baban Sao, Son of Late Kameshwar Sao, resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
7. Sumitra Devi, wife of Late Bharat Sao @ Bullu Sao, resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
8. Shatruhan Kumar, Son of Late Kameshwar Sao, resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
9. Sone Lal Sao, Son of Late Munshi Sao, Resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
10. Sulochana Devi, Wife of Late Rajendra Sao, Resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
11. Manoj Sao, Son of Late Rajendra Sao, Resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
12. Shrawan Sao, Son of Sone Lal Sao, Resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
13. Kishuni Devi, Wife of Late Nand Lal Sao, Resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
14. Gopal Sao, Son of Late Nand Lal Sao, Resident of Village- Mor English, P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.
15. Kameshwar Sao, Son of Late Munshi Sao, Resident of Village- Mor English,



P.S.- Mokama, District- Patna, Bihar, Pin Code- 803302.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Nazir Alam, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 18-02-2025

Record taken up on mentioning being made on behalf of the petitioners and I intend to dispose of the petition at the stage of admission itself.

2. Heard learned counsel for the petitioners.

3. The petitioners are aggrieved by the order dated 05.08.2023 passed by learned Sub Judge-I, Barh (Patna) in Title Partition Suit No. 06 of 1999, whereby and whereunder the learned trial court rejected the petition dated 28.05.2018 filed by the petitioners under Order 1 Rule 10(2) read with Section 151 of the Code of Civil Procedure (in short 'the Code') for impleading them as defendants in the said title partition suit.

4. Learned counsel for the petitioners submits that admittedly the petitioners are the descendants of common ancestor same as the plaintiffs and defendants of Title Partition Suit No. 06 of 1999. There has been no evidence on record with regard to earlier partition between different branches though averment in this regard has been made in the pleading. Still, the learned trial court did not take into consideration this fact and



refused to implead the petitioners as defendants. Thus, impugned order is bad and illegal. The petitioners are necessary party in the suit as the petitioners are descendants of common ancestor having their house, kitchen and garden on the suit property appertaining to Plot Nos. 1119, 2065 and 2064. The plaintiffs with fraudulent intent to deprive the petitioners, did not implead them as parties in their title partition suit.

5. Perused the records.

6. From perusal of the record it transpires that the petitioners claimed themselves to be common descendants along with plaintiffs having a common ancestor. But perusal of impugned order reflects that the plaintiffs filed their suit making claim that earlier some partition had taken place between different branches and now partition was sought only amongst the plaintiffs and defendants who come from one of the branches. The defendants contested the suit and it further transpires that the matter is travelled up to this Court in second appeal and judgment and decree of the learned trial court and the first appellate court, respectively were affirmed. Further, the title partition suit was filed in the year 1999 and the orders in second appeal was passed on 04.04.2016. The learned trial court in impugned order has also mentioned that one of the issues before



the trial court was about non-joinder of parties and the issue was decided in favour of the plaintiffs.

7. Now, Order 1 Rule 10(2) of the Code reads 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. It is left to the wisdom of the court to see whether a party should be impleaded in the proceeding at any stage if the court find that the impleadment is necessary for effectually and completely decide the matter between the parties, and it finds so, such impleadment could be allowed. But in the present case though the petitioners claim themselves to be co-sharers but did



not take up the matter during all the time before any of the courts. Now when the suit of the plaintiffs attained finality, the petitioners sought impleadment at the stage of execution and the same smacks of malafide. Moreover, it cannot be said that presence of the petitioners is necessary for determinatin of controversy between the parties. If the petitioners are having their claim based on denial of claim of earlier partition between different branches of the common ancestor, they can always institute their own suit and chart their independent course of action. But at this stage, the prayer for impleadment on part of the petitioners does not appear to be bonafide. So the learned trial court having considered the claim and necessity for impleadment rightly rejected the petition of the petitioners.

9. In the light of above discussion, I do not find any infirmity in the impugned order dated 05.08.2023 and hence, the same is affirmed.

10. In the result, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.02.2025
Transmission Date	NA

