

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.671 of 2022

Virender Kumar Dubey Son of Late Bhrigunath Dubey, Resident of Village-
Sasamusa, P.S.- Kuchaikot, District- Gopalganj.

... .. Petitioner/s

Versus

1. Dhrupdeo Mali Son of Adalat Manjhi, Resident of Sawnahi Patti, Tola
Dhum Nagar, P.S.- Fulwaria District- Gopalganj.
2. Kumari Kavita Wife of Dhrupdeo Mali, Resident of Sawnahi Patti, Tola
Dhum Nagar, P.S.- Fulwaria District- Gopalganj.
3. Sima Devi W/o Mukul Kumar Tiwari, Resident of Village- Kotwa, P.S.
Gopalganj Town, District- Gopalganj.
4. Sarita Devi W/o Mukul Kumar Tiwari, Resident of Village- Kotwa, P.S.
Gopalganj Town, District- Gopalganj.
5. Mukul Kumar Tiwari Son of Late Bharat Tiwari, Resident of Village-
Kotwa, P.S. Gopalganj Town, District- Gopalganj.
6. Dr. Subhash Chandra S/o Babu Bacha Prasad Roy, Resident of Village-
Chhathu Bathua, P.O. and P.S.- Uchakagaon District- Gopalganj
7. Smt Veena Roy W/o Dr. Subhash Chandra, Resident of Village- Chhathu
Bathua, P.O. and P.S.- Uchakagaon District- Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chandrakant, Advocate Mr. Vikash Kumar Shukla, Advocate
For the Respondent/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Ranjan Kumar Srivastava, Advocate Mr. Anjani Kumar, Advocate Mr. Abhishek Kumar Srivastava, Advocate Ms. Kumari Shreya, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 08-04-2025

The instant civil miscellaneous petition has been filed
by the petitioner for quashing the order dated 16.08.2022 passed
in Title Suit No. 889 of 2017 by learned Sub Judge-XVI,
Gopalganj, whereby and whereunder the petition dated



22.03.2022 filed under Order 1 Rule 10 and Section 151 of the Code of Civil Procedure (for brevity 'the Code') for adding the petitioner as a party defendant has been rejected.

2. Briefly stated, the facts leading to the present case are that the plaintiffs/respondents 1st set filed Title Suit No. 889 of 2017 on 17.10.2017 before the court of learned Sub Judge-XVI, Gopalganj seeking declaration that the suit land is the purchased land of the plaintiffs and had been coming into their peaceful possession till the time they were dispossessed by the defendants 1st set/respondents 2nd set who are trespassers. The plaintiffs further sought recovery of possession and entry of the suit land by the defendants 1st set in their sale deed as illegal and void. The plaintiffs also sought permanent injunction against the defendants 1st set from making any change over the suit land. The intervenor/petitioner, on coming to know about pendency of Title Suit No. 889 of 2017 on 08.03.2022, enquired into the matter, applied for certified copy of the plaint as well as order sheets and after obtaining these documents, filed impleadment petition under Order 1 Rule 10 and Section 151 of the Code for adding him as party defendant on the ground that the petitioner is a necessary and proper party having bonafide right, title and interest over the disputed land. The petitioner put



forward his case that the land in question appertaining to Khata No. 130, Khesra No. 1232, 1233 and 1234, area 7 katha 10 dhurs situated in Mauza – Sareya, Ward No. 4, Thana No. 83 under P.S. and District – Gopalganj was khatiyani land of Dal Sah. On 01.12.1941, Dal Sah executed a registered gift deed in favour of his daughter Jyotiya and one Bikarma Sah and they came into peaceful possession over the land in question. Out of the said land, Jyotiya transferred 2 katha 10 dhurs land to the grandfather of the petitioner namely, Kamal Dubey on 30.08.1948 and Kamal Dubey came into possession over the said land. Kamal Dubey died leaving behind his son Bhrigunath Dubey, who died leaving behind his two sons, the petitioner Virendra Dubey and co-owner Ravindra Dubey. The petitioner and his brother came into joint possession on 2 katha 10 dhurs land. The petitioner raised 4 feet high boundary wall around the land. The petitioner further submitted that on the basis of the sale deed of 1948, the petitioner has been coming into title and possession of the suit land and therefore, he is a necessary party. However, the plaintiffs/respondent nos. 1 and 2 contested the claim of the petitioner by filing reply on 11.04.2022 and the learned trial court after hearing the parties dismissed the intervention petition of the petitioner vide order dated



16.08.2022. The said order is under challenge before this Court.

3. Learned counsel for the petitioner submitted that the impugned order is bad in the eyes of law as well as on facts. It is an arbitrary and illegal order. The learned trial court exceeded its jurisdiction in passing the impugned order. The learned trial court has failed to appreciate that the petitioner is a necessary and proper party having bonafide right, title and interest over the suit land. The learned trial court has not considered that it is the object of the provision under Order 1 Rule 10(2) of the Code to bring on record all the persons who are necessary parties to the dispute so that dispute may be finally determined in their presence and multiplicity of proceeding may be avoided. Learned counsel further submitted that the learned trial court has failed to consider that the grandfather of the petitioner had purchased 2 katha 10 dhurs land by virtue of registered sale deed dated 30.08.1949 and the same land is the suit property of Title Suit No. 889 of 2017. Learned counsel further submitted that the plaintiffs have deliberately not made the petitioner party and the learned trial court did not take this fact into consideration and rejected the application for impleadment only on the ground that the boundary of the land mentioned by the intervenor is different



from the boundary of the land mentioned in the suit of the plaintiffs. The learned trial court has further held that the petitioner did not file on record the document of registered gift deed dated 01.12.1941 and only advanced his claim on the basis of the registered sale deed dated 30.08.1948. Learned counsel further submitted that the learned trial court further missed the point when it held that the plaintiffs have brought the suit against the defendants for recovery of possession and there appears no interest of the intervenor in the present suit.

4. In support of his contention learned counsel for the petitioner referred to a decision of this Court in the case of ***Singheshwar Rai Vs. Babulal Rai and another***, reported in ***AIR 1980 Patna 187***, wherein the learned Single Judge held that the issues involved in the suit cannot be read as issues involved between the parties to the suit and held that as opposite party no. 2 had direct interest in the suit properties, the decision of the learned Munsif was not bad or wrong that the presence of opposite party no. 2 as a defendant was essential for adjudicating upon all the issues involved in the suit effectively and completely. Learned counsel also referred to a decision of Hon'ble Supreme Court in the case of ***Razia Begum Vs. Sahebzadi Anwar Begum***, reported in ***AIR 1958 SC 886*** which



was relied by the learned Single Judge. Learned counsel then referred to a decision of this Court in the case of ***Shanti Singh & Ors. Vs. Mr. Jugeshwar Nath Srivastava & Ors.***, reported in ***2024(1) PLJR 493*** wherein finding that petitioners have substantial interest in the property in dispute, they were ordered to be impleaded as co-appellants relying on the decision of ***Kasturi Vs. Iyyamperumal***, reported in ***(2005) 6 SCC 733*** and ***Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd.***, reported in ***(2010) 7 SCC 471***. Thus, learned counsel submitted that the impugned order is not sustainable in the eyes of law and same may be set aside.

5. On the other hand, learned counsel appearing on behalf of respondent nos. 1 and 2 vehemently contended that there is no infirmity in the impugned order and the same does not require any interference. Learned counsel for the respondents submitted that the suit land originally belonged to Dal Sah who died leaving behind two daughters, Jyotiya Devi and Budhiya Devi. Budhiya Devi had a son Bikrama Sah, whose wife was Parbati Devi and they had 4 sons, Nand Lal Sah, Mohan Sah, Chote Lal Sah and Brij Lal Sah. The total area of suit property appertaining to Khata No. 130, Plot Nos. 1232,



1233 and 1234 is 7 katha 11 dhurs and on 01.12.1941 the original owner namely, Dal Sah gifted the entire land to his daughters Jyotiya Devi and Budhani Devi. On 21.06.1983, Jyotiya Devi and all the legal representatives of deceased Budhiya Devi sold 2 katha 10 dhurs of land in favour of defendant nos. 4 and 5 who took their respective possession, mutated their names in revenue record, constructed their boundary wall and fixed an iron gate and in boundary of these sale deeds names of grandfather of intervenor or the intervenor are not mentioned. Further, on 01.12.1993, Jyotiya Devi gifted 2 katha 13 dhurs of land in favour of her daughter namely, Laxmina Devi, who came in its peaceful possession. Thereafter, on 10.06.1994 and 14.08.1997 the legal representatives of Budhiya Devi sold the remaining land, i.e., 2 katha 7.5 dhurs to Beena Srivastava and after the death of Beena Srivastava, her legal representative namely, Rajendra Prasad Srivastava and his daughter and son sold the land to defendant nos. 1 to 3 on 03.03.2016 (two sale deeds) and on 14.03.2016 (one sale deed). On 08.04.2015, defendant nos. 4 and 5 sold their purchased land in favour of plaintiffs/respondents 1st set and handed over peaceful possession. Accordingly, plaintiffs mutated their names in revenue record and started their peaceful possession. Learned



counsel further submitted that some scuffle took place between the plaintiffs and defendants 1st set with regard to right of passage in the suit land and defendant no. 3 filed a complaint case bearing Complaint Case No. 4300 of 2016 in which the intervenor was a witness and was examined on 18.07.2016 and he had been fully aware about possession, right and title of the plaintiffs. The defendants 1st set also filed Title Suit No. 562 of 2017 for easementary right and permanent injunction against the plaintiffs in which the name of intervenor is missing though intervenor appeared as a witness in the complaint of defendants 1st set. Learned counsel further submitted that the claim of the intervenor is based on sale deed executed by Jyotiya Devi in favour of grandfather of the intervenor dated 30.08.1948 but the name of grandfather of the intervenor-petitioner has not been recorded in any revenue record nor he came in possession over the land in question. Therefore, it is clear that the alleged sale deed is a forged document and was created at the instance of defendants 1st set only to delay the disposal of the case. Learned counsel further submitted that the boundary as mentioned in the plaint as well as intervention petition are different and moreover, the intervention petition is based on forged document and for this reason, the learned trial court has passed a perfectly



valid order.

6. Learned counsel further submitted that, in fact, the petitioner has been set up by the defendants 1st set. Despite knowing about the pendency of the suit of the plaintiffs/respondents 1st set, the defendants 1st set did not appear in the case and set up the intervenor after manufacturing forged document and the intervention petition was rejected by the learned trial court. Meanwhile, 4 witnesses have been examined on behalf of the plaintiffs and vide order dated 28.04.2023, the evidence of the plaintiffs was closed then the defendants 1st set filed an application on 29.04.2023/09.05.2023 to recall the ex-parte order passed on 03.08.2018. The intervention petition has been filed to delay the matter though the intervenor-petitioner has all along been knowing about the pendency of Title Suit No. 889 of 2017. Learned counsel further submitted that the petitioner is neither a necessary party nor a proper party. The alleged sale deed which has been filed by the petitioner by way of supplementary affidavit never came into picture anywhere prior to filing of the intervention petition. Moreover, the petitioner is trying to canvas his own case and if he is aggrieved, he has his own cause of action and he could agitate the same by filing an independent suit. The



plaintiffs/respondents 1st set have not sought any relief against the petitioner and question involved in the suit can be decided without making the petitioner party and for this reason the petitioner is neither a necessary nor proper party and his presence is not necessary to effectively and completely decide the suit. Learned counsel further submitted that the petitioner did not file original sale deed and even before this Court he has only filed photo copy.

7. Learned counsel referred to a decision of Hon'ble Supreme Court in the case of *Kasturi Vs. Iyyamperumal*, reported in *(2005) 6 SCC 733*, wherein the Hon'ble Supreme Court considered who are necessary party or proper party and held that the test for determining the question who is a necessary party, are (i) there must be a right to some relief against some party in respect of the controversy involved in the proceedings and (ii) no effective decree can be passed in absence of such party. Learned counsel submitted that in the present case intervenor-petitioner is not even a proper party whose presence may enable the court to proceed with the matter and dispose it of effectively and completely though such person may not be a necessary party. Learned counsel also referred to another decision of learned Single Judge of this Court in



C.W.J.C. No. 8460 of 2014 (Uma Shankar Prasad & Ors. Vs. The State of Bihar through the Collector & Ors.), wherein the learned Single Judge held that the plaintiffs filed suit for declaration of title over the suit property and also mentioned that cause of action for the suit arose only after receiving a notice by defendants alleging encroachment by the plaintiffs over the suit land. The intervenors-petitioners claim their own independent title denying the title of the plaintiffs as well as defendants and the learned Single Judge held that relief sought by plaintiffs is not detrimental to petitioners' title and interest which they might have over suit land as the decree to be passed in suit could not be binding upon them. Learned Single Judge further held that the person seeking to be added as party in the suit, must be the person who would be bound by the result of the suit which may legally affect him by curtailing his legal rights over the suit property and thus refused to interfere with the impugned order rejecting the claim of the intervenors-petitioners.

8. Learned counsel for the respondents relied on two decisions of this Court wherein this Court refused to allow the impleadment of such persons who were found to be not necessary or proper parties. Their presence was not found to be



necessary before the court to enable the Court to completely, effectively and adequately adjudicate upon all matters. In the case of **Sunderpati Devi Vs. Most. Kishora Devi & Ors.** passed in ***Civil Miscellaneous Jurisdiction No. 1933 of 2017***, wherein this Court held that the scope of a suit for partition cannot be enlarged to include declaration of status for a third party. Similarly, in the case of ***Braj Bhushan Deva Vs. Shambhu Devi and Others*** passed in ***Civil Miscellaneous Jurisdiction No. 605 of 2016***, wherein this Court found that presence of intervenors was not at all necessary in the given facts and circumstances. Thus, learned counsel submitted that there is no infirmity in the impugned order and the same may be affirmed.

9. I have given my thoughtful consideration to the submission of the parties and have perused the record.

10. Order 1 Rule 10 (2) of the Code reads as under:

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“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.”

11. The purpose and scope of Order 1 Rule 10(2) of the Code has been settled by various decisions of 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*** the Hon’ble Supreme Court has discussed the law relating to impleadment of the parties. It will be pertinent to quote paragraphs 13, 14, 15, 22, 25 & 27 of the said judgment:-

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:



“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.”

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. 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. 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. 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. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without



any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.

27. On a careful examination of the facts of this case, we find that the appellant is neither a necessary party nor a proper party. As noticed above, the appellant is neither a purchaser nor the lessee of the suit property and has no right, title or interest therein. The first respondent-plaintiff in the suit has not sought any relief against the appellant. The presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the first respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title in the property



in dispute”.

12. Further, the Hon’ble Supreme Court in the case of ***Kasturi v. Iyyamperumal*** (*supra*) held that for determining the question who is a necessary party, the tests are (i) there must be a right to some relief against some party in respect of the controversy involved in the proceedings and (ii) no effective decree can be passed in absence of such party. On the other hand, a proper party is one whose presence may enable the court to effectively and completely dispose of the matter.

13. Now coming to the facts of this case, the intervenor-petitioner seeks impleadment on the ground that the plaintiffs/respondents 1st set have instituted the suit against defendants 1st set/respondents with regard to the suit property which is the property of the intervenor-petitioner. Now, the learned trial court did not allow the impleadment of the intervenor-petitioner mainly on the ground that the boundary of the property of the plaintiffs/respondents 1st set are different. Further, the fact has been noted that the total area of the suit plots were 7 katha 2 dhurs whereas both the plaintiffs and defendants are claiming 2 katha 10 dhurs land. Thus there is doubt over the identity of the suit property that the property of the plaintiffs and the property of the intervenor are the same.



Further, the learned trial court has also taken note of the fact that the intervenor has not produced the document dated 01.12.1941 making the claim of the intervenor-petitioner suspect. Furthermore, the plaintiffs have not sought any relief against the intervenor and are not claiming any right to some sort of relief against him in respect of the dispute. Further, the court can pass effective decree on the basis of the claim of the parties to the suit and not dependent upon the intervention of the intervenor for passing such decree. It is evident from the record that the intervenor-petitioner has set up his own independent title over the suit land and has denied the title of both the plaintiffs as well as defendants. Even if the suit of the plaintiffs is decreed, the same would hardly affect the right, title and interest of the intervenor and in other words, it would not be detrimental to the interest of the intervenor-petitioner as the decree would not be binding upon him. The result of the litigation would not affect the intervenor legally and would not curtail his legal rights. The intervenor-petitioner wants to further his own cause by seeking impleadment but he is free to chart his own course by instituting an independent suit for asserting his claim. But under the provisions of Order 1 Rule 10(2) of the Code, the intervenor-petitioner could not be joined as a defendant in the present case



as he is only a busy body who is trying to intervene in the matter.

14. In the light of discussion made, I am of the view that none of decisions cited by learned counsel for the petitioner is of any help to the case of the petitioner for the simple reason that facts of those cases are quite different from the facts of the present case.

15. Having regard to the facts and circumstances and discussion made, I do not find any error of jurisdiction in passing the impugned order by the learned trial court and hence, the order dated 16.08.2022 is affirmed. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	28.01.2025
Uploading Date	08.04.2025
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