

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1446 of 2019**

1. Ramvichar Rai, S/o Late Baliram Rai,
 2. Ram Sokil Rai, S/o Late Jimdar Rai,
 3. Ravindar Rai, S/o Late Brij Nandan Rai,
 4. Lakhan Rai, S/o Late Baliram Rai,
 5. Veyash Rai, S/o Late Baliram Rai,
- All are residents of Mohalla- Ramji Chak, Chainpur Kothi, Digha, P.S.-
Digha, District- Patna

... .. Petitioner/s

Versus

1. Sri Raj Nath Das, S/o Late Satya Narain Ram,
 2. Sheo Rato Devi, W/o Late Satya Narayan Rai
 3. Sri Binda Ram, S/o Late Bujhawan Ram,
 4. Sri Chandrika Ram, S/o Late Bujhawan Ram,
 5. Sri Ajay Ram, S/o Late Ram Ishwar Ram
- All are residents of Mohalla- Chainpur Kothi, Digha, Near Bata Shoe
Factory, P.S.- Digha, P.O.- Bataganj, District- Patna
6. Laxmi Devi, W/o Sri Bindeshari Rai, Resident of Mohalla- Chainpur Kothi,
Ramjichak, Digha, P.S.- Digha, P.O.- Bataganj, District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Dubey, Advocate
		Mr. Kumar Gaurav, Advocate
For the Respondent/s	:	Mr. Rajnikant Jha, Advocate

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

Date : 07-03-2025

The instant petition has been filed under Article 227 of the Constitution of India challenging the order dated 06.05.2019 passed in Title Suit No. 136 of 2017 by the learned Sub Judge- XII, Patna whereby and whereunder the learned Sub Judge allowed the intervener application dated 17.05.2018 filed by the intervener/petitioner under Order 1 Rule 10 (2) of the Code of



Civil Procedure (hereinafter referred to as 'the Code').

2. Briefly stated, the facts of the case are that the petitioners are plaintiffs of Title Suit No. 136/2017 which has been filed against the defendants/respondents 1st set for declaration of title and non-title of the defendants on the suit land apart from other reliefs. The suit property is one Plot No. 11 under Khata No. 1616 measuring an area of 4.28 acres situated at Mauza- Saidpur Digha, P.S.-Digha, District-Patna, which belonged to one Raja Chandeshwar Prasad Narayan Singh (hereinafter mentioned as 'Late CPN Singh'), who died on 28.09.1941 leaving behind his four daughters, namely Janak Kishori Devi, Krishna Kishori Devi, Raj Kishori Devi and Girija Kishori Devi and one of the daughters, namely Janak Kishore Devi died issue-less. The disputed Plot No. 11 along with other properties had been partitioned between three daughters of Late CPN Singh in Partition Suit No. 75/1963 to the extent of 1/3rd share. Krishna Kishori Devi died leaving behind her two sons, namely Late Jagat Kishore Prasad Narayan Singh and Sri Ram Kishore Prasad Narayan Singh. The Plot No. 11 had an area of 6 *Bigha* and 16 *Katha* (4.28 acres) and in northern side 2 *Bigha* 6 *Katha* of land remained in share of Late Girija Kishori Devi, who died leaving behind her son, namely Birendra Dhari Singh, who also died leaving behind his son,



namely Kaushal Kishore Kumar Singh, whose marriage was solemnized with one Rama Devi. Girija Devi sold her 1/3rd share of land including the disputed land in favour of Rama Devi through the registered sale deed dated 01.09.1992 and put her in possession. Later on, Rama Devi executed two registered sale deeds on 14.11.1996, one in favour of Punita Kumari with respect to 10 *Katha* of land and another in favour of Prakash Kumar for another 10 *Katha* and put them in possession. The plaintiffs are purchasers of certain portion of land from Prakash Kumar, who filed Title Suit No. 44/2002 for declaration of his title over disputed land and the suit was decreed and title of vendor of the plaintiffs was declared vide judgment dated 16.03.2005. The plaintiffs purchased 5 *Katha* and 12 *Dhurs* of land after passing of decree of Title Suit No. 44/2002. However, when the plaintiffs started to construct boundary wall, then the defendants made resistance to it along with other persons. Thereafter, the plaintiffs filed the present suit. However, the defendants did not appear in the suit and the suit proceeded *ex-parte*. During pendency of the suit, one Laxmi Devi filed an application on 17.05.2018 under Order 1 Rule 10 (2) of the Code with prayer to add her party defendant to the suit on the ground that she had purchased the suit land from the rightful owner. According to the intervener/respondent 2nd set, the entire



land of Plot No. 11 has been allotted to Raj Kishori Devi, which is apparent from the judgment passed in Title Suit No. 75/1963. During pendency of Title Suit No. 75/1963, Raj Kishori Devi had already sold the entire property of Plot No. 11 with consent of other co-sharers and for this reason, Plot No. 11 was allowed to be allotted in share and *takhta* of Raj Kishori Devi or to her purchaser. The plaintiffs filed a rejoinder on 05.10.2018 to the aforesaid intervener petition and made a prayer to dismiss the petition on the ground that property has been purchased by the intervener-Laxmi Devi from a person having no right or title in the property. The learned trial court allowed the petition of the intervener vide order dated 06.05.2019 and the said order is under challenge before this Court.

3. The learned counsel for the petitioner submitted that the order impugned has been passed without considering the fact that intervener is neither a necessary nor a proper party in the present case. If the vendor of the intervener is already on record, there is no necessity of adding the intervener as party defendant. The learned counsel further submitted that the learned trial court did not take into consideration the fact that the intervener claimed that she purchased the suit land from defendant nos. 3 & 4 through registered sale deed dated 04.08.2014, but she intentionally and deliberately did not



disclose this fact that her vendor along with others have already filed Title Suit No. 448/2011 in the court of learned Sub Judge-1, Patna for declaration of their title and possession over different land as mentioned in Schedules of the plaint as also for declaration that the judgment and decree dated 16.03.2005 passed in Title Suit No. 44/2002 on the basis of the aforesaid sale deed dated 14.11.1996 was illegal. Other reliefs have also been sought by the vendor of the intervener. The learned counsel further submitted that the Title Suit No. 448/2011 came to be dismissed vide order dated 18.04.2016 for non-prosecution and the same has not been restored till date. With the dismissal of Title Suit No. 448 of 2011, right, title and possession of the vendor of the plaintiffs have been affirmed while right and title of the vendor of the intervener has not been decided. Therefore, the claim of the intervener is from a person without any right and title over the suit land. But the learned trial court did not consider this fact while impleading the intervener/respondent 2nd set. Thus, learned counsel submitted that the impugned order is not sustainable and the same needs to be set aside.

4. The contention made on behalf of the petitioners has been vehemently opposed by learned counsel appearing on behalf of the respondent no. 6. The learned counsel submitted that there is no infirmity in the impugned order and the same



does not need any interference by this Court. The learned counsel further submitted that the facts of the case show that the intervener/respondent 2nd set is necessary party. Admitting the genealogy of Late CPN Singh, learned counsel submitted that Late CPN Singh had three wives and from the first wife, he had a daughter, namely Janak Kishori Devi and from the second wife, he had three daughters, namely Raj Kishori Devi, Krishna Kishori Devi and Girija Kishori Devi and from the third wife, he had no issue. The third wife and Janak Kishori Devi, both died issue-less. Thus, the three daughters from the second wife became the legal heirs and successors of the property of Late CPN Singh. Subsequently, Raj Kishori Devi, one of the daughters of Late CPN Singh, filed Title Partition Suit No. 75/1963 against her two sisters and others for partition of the property left by Late CPN Singh. The said partition suit was decreed vide judgment and decree dated 24.07.1984 by the court of learned Additional Sub Judge-II, Patna by which 1/3rd share was defined to each daughter of Late CPN Singh. Raj Kishori Devi had already sold the entire area of Plot No. 11 measuring 4.28 acres of land through five registered sale deeds during pendency of Title Partition Suit No. 75/1963. The two purchasers of CS Plot No. 11 from Raj Kishori Devi were defendant nos. 4 & 5 in the said suit. But remaining three



purchasers were not made party in the said suit. The defendants pleaded in the said suit that Raj Kishori Devi sold an area of 2 *Bigha* to defendant no. 5 vide registered sale deed dated 18.06.1975 and put him in possession. Vide another sale deed dated 18.06.1975, Raj Kishori Devi further sold an area of 2 *Bigha* of CS Plot No. 11 to one Nalini Singh, the wife of defendant no. 4 of Title Partition Suit No. 75/1963 and she was also put her in possession. Vide the third sale deed, the plaintiff of Title Partition Suit No.75/1963 further sold an area of 2 *Bigha* out of Plot No. 211 to one Nirija Guleri and she was also put into possession. Raj Kishori Devi, by way of other two registered sale deeds, sold the remaining area of Plot No. 11 to one Raghuraj Singh (area 15 *katha*) and Hakim Hafiz Mohammad Affan (area 3 *katha*), respectively and also put them in possession of their respective purchased area. In this way, the plaintiff of Title Partition Suit No. 75/1963, namely Raj Kishori Devi sold entire 4.28 acres of land of CS Plot No. 11 to five persons through five separate registered sale deeds and put the purchasers in possession. In Title Partition Suit No. 75/1963, the defendant nos. 4 & 5 pleaded that the entire area of CS Plot No. 11 which was in possession of the purchasers should be allotted in the share of Raj Kishori Devi so that their respective purchase and possession may remain good and lawful. This pleading of



the defendant nos. 4 & 5 was not opposed by any of the parties and the learned Sub Judge in his judgment dated 24.07.1984 ordered that the properties the defendants purchased and the list of which had been given in the written statement should be allotted to them so that the claim of the defendants might not be defeated. The learned counsel further submitted that Raghuraj Singh, purchaser of part area of CS Plot No. 11 sold an area of 2 *Katha* 1 *Dhur* and 8 *Dhurki* out of CS Plot No. 11 to Binda Ram and Chandrika Ram, sons of Late Bujhawan Ram, who continued their possession and kept on paying rent to the State of Bihar. The said Binda Ram and Chandrika Ram constructed their house on purchased land and had put boundary wall on it. Subsequently, they sold their purchased land with construction of boundary wall in favour of respondent no. 6 vide registered sale deed dated 04.08.2014 and put the respondent in possession. The respondent has further made construction on her purchased land and had sunk tube-well and had also taken electric connection and had been residing her with family members. The respondent has been paying holding tax to Danapur Municipality. The receipts of the electricity company and holding/property tax show that respondent no. 6 is in actual and exclusive possession with house in question which has been purchased prior to filing of the suit. The learned counsel further



submitted that the facts narrated here-in-above make it crystal clear that neither the plaintiffs nor their vendors acquired their right, title and interest or possession of any area of land of CS Plot No. 11. Thus, the intervener/respondent no. 6 has a direct interest in the outcome of the Title Suit No. 136/2017 and the learned trial court has rightly made her a party defendant in the suit. Hence, there is no infirmity in the impugned order and the same needs no interference by this Court.

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

6. The short question involved in the present *lis* is whether the respondent no. 6 has rightly been impleaded as party defendant in the title suit filed by the plaintiffs/petitioners.

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. In the present case, there are rival claims over the suit property. From the facts narrated here-in-above in the submission of the learned counsels for the parties, admittedly property belonged to Late CPN Singh which passed on to his successors after his death. The plaintiffs/petitioners have nowhere disputed the judgment of Title Suit No. 75/1963. The whole claims of the plaintiffs is based on the fact that CS Plot No. 11 was partitioned between three sisters, namely Raj Kishori Devi, Krishna Kishori Devi and Girija Kishori Devi and the vendors of the plaintiffs claim to have purchased the land from one Prakash Kumar, who earlier purchased the same from one Rama Devi, wife of Kaushal Kishore Kumar Singh, who was grandson of Girija Kishori Devi. On the other hand, respondent nos. 3 & 4 who are vendors of respondent no. 6 claim to have purchased the land from one Raghuraj Singh, vendee of Raj Kishori Devi and thus claims that the entire Plot No. 11 was allotted in the share of Raj Kishori Devi. The plaintiffs/petitioners have not disputed the partition being effected through Title Partition Suit No. 75/1963. From the judgment dated 24.07.1984, it is evident that the properties purchased from the plaintiffs by defendant nos. 4 & 5 was



ordered to be allotted to the plaintiffs so that claim of the defendants might not be defeated. It was further ordered that if these defendants participate in the allotment proceeding, the properties may also be allotted to the share of these defendants by mutual consent and agreement of the plaintiffs. This gives credence to the claim of the respondent that property purchased by them have been from the persons, who might have legitimate claim over it.

11. Another objection of the plaintiffs to the impleadment is on the ground that their vendors filed Title Suit No. 44/2002 with regard to the said properties and it was decreed in favour of their vendor. Further objection is on the ground that the vendor of the respondent filed Title Suit No. 448/2011 which was dismissed on account of non-appearance of the plaintiffs on consecutive dates and for not adducing evidence. On the basis of the proceedings of these two suits, the plaintiffs claim that the respondent nos. 3 & 4 have no right or title to pass to respondent no. 6 and, hence, her impleadment was wrong. Now, perusal of the judgment of Title Suit No. 44/2002 shows it was a judgment under Order 8 Rule 10 of the Code and the plaintiff filed the suit for declaration of his title over the suit property in Schedule I of the plaint without seeking any relief of confirmation of possession or recovery of



possession. Further perusal of the judgment also throws some interesting facts. The judgment of the Title Suit No. 75/1963 was perhaps not filed or exhibited and only document exhibited was certified copy of the sale deed dated 14.11.1996 which was marked as Exhibit-1 of Title Suit No.44/2002. On the basis of this judgment, the plaintiffs are claiming their title and objecting to impleadment of respondent no. 6. There appears evasive pleadings as the plaintiffs claim 1/3rd share was allotted to each of the sisters in Title Suit No.75/1963, though nowhere they have mentioned about CS Plot No. 11 being sold by Raj Kishori Devi and the learned trial court protecting the interest of the defendants. There has been no challenge to such allotment made in Title Suit No. 44/2002. Further, merely seeking the declaratory relief of right, title and interest on the suit land without any consequential relief would not suffice for the purpose of the plaintiffs as already observed that the same was not filed seeking confirmation of possession, though there has been claim that the defendants were interfering with the possession and claiming right, title and possession over the suit property. After respondent no. 6 has been able to bring on record certain documents which has been showing her interest in the suit property claimed through their vendors, to my mind, she has been able to took a case in her favour for her impleadment.



12. 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 in the suit and in the present case, it is more than the semblance of interest. This fact is also evident as the plaintiffs made the vendor of the respondent no. 6 as defendant and if the respondent no. 6 is a purchaser prior to institution of suit, the right, title and interest of the vendor of respondent no. 6 stand transferred to her on the date of institution of suit and she becomes a necessary party. At the same time, respondent no. 6 has also brought on record document showing her possession over the suit property and, in this way, fortifying her claim for impleadment. Thus, I am of the opinion that the respondent no. 6 has been able to make out a case in her favour for her impleadment and her impleadment appears to be just and proper.

13. In the light of discussion made here-in-above, I have no hesitation in holding that the learned trial 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 06.05.2019 passed by learned Sub Judge-XII, Patna in Title Suit No. 136 of 2017 is



affirmed.

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

15. However, it is made clear that observations made here-in-before are only for the purpose of disposal of the present petition and would not cause prejudice to the claims of the parties.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	25.02.2025
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