

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.97 of 2023

In
CIVIL REVISION No.40 of 2021

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1. Dhruv Deo Prasad son of Baidya Nath Prasad resident of Village- Tarwa, P.O.- Tarwa, P.S.- Siwan Mufassil, District- Siwan.
 2. Dharmdeo Prasad, son of Baidyanath Prasad, resident of Village- Tarwa, P.O.- Tarwa, P.S.- Siwan Mufassil, District- Siwan.
 3. Santosh Prasad, son of Late Mukti Prasad, resident of Village- Tarwa, P.O.- Tarwa, P.S.- Siwan Mufassil, District- Siwan.

... .. Petitioner/s

Versus

- 2.1. Birendra Prasad, Son of Late Baleshwar Prasad, R/o Village - Tarwa P.S. - Siwan, Muffasil, District- Siwan.
- 2.2. Ravindra Prasad Son of Late Baleshwar Prasad, R/o Village - Tarwa P.S. - Siwan, Muffasil, District- Siwan.
- 2.3. Anjani Kumar Son of Late Baleshwar Prasad, R/o Village - Tarwa P.S. - Siwan, Muffasil, District- Siwan.
- 2.4. Vishal Prasad Son of Late Baleshwar Prasad, R/o Village - Tarwa P.S. - Siwan, Muffasil, District- Siwan.
- 2.5. Sunita Devi W/o - Sanjay Rawat, D/o - Baleshwar Prasad, R/o Village - Geradapur, P.O. - Chanaupura, P.S. - Baikunthpur, District- Gopalganj.
3. Yogendra Prasad, son of Sri Bhagwat Prasad, Resident of Village-Tarwa, P.S. Siwan Mufassil, District- Siwan.
4. Lalan Prasad, son of Late Radhey Prasad, Resident of Village- Kabirpur Sakala, P.O.- Sidhawalia, P.S.- Mohammadpur, District- Gopalganj
5. Amar Rai son of Late Bahadur Rai, Resident of Village- Kabirpur Sakala, P.O.- Sidhawalia, P.S.- Mohammadpur, District- Gopalganj
6. Swami Nath Rai, son of Late Bahadur Rai, Resident of Village- Kabirpur Sakala, P.O.- Sidhawalia, P.S.- Mohammadpur, District- Gopalganj
7. Madan Yadav, Son of Bikarma Yadav, Resident of village- Audan Patti, P.O. Bareya, P.S. Mirganj, District-Gopalganj.
8. Ashok Yadav, Son of Bikarma Yadav, Resident of Village- Audan Patti, P.O. -Bareya, P.S. Mirganj, District- Gopalganj.
9. Most. Lalita Kuar, Wife of Surendra Prasad, Resident of Village- Tarwa, P.O. Tarwa, P.S. Siwan Mufassil, District-Siwan.
10. Neha Kumari, D/o of Surendra Prasad, Resident of Village- Tarwa, P.O.- Tarwa, P.S.- Siwan Mufassil, District- Siwan.
11. Priti Kumari, D/o of Surendra Prasad, Resident of Village- Tarwa, P.O.- Tarwa, P.S.- Siwan Mufassil, District- Siwan.
12. Priya Kumari, D/o of Surendra Prasad, Resident of Village- Tarwa, P.O.- Tarwa, P.S.- Siwan Mufassil, District- Siwan.

13. Mira Devi, Wife of Surendra Prasad, Resident of Village- Dhano Chapra, P.O. Mirjapur, P.S. Ekma, District- Saran.
14. Babita Kumari, Wife of late Awadhesh Rai, Resident of Village-Pankaj Takij, P.O. and P.S. Chapra, District-Saran.
15. Geeta Devi, Wife of Dinesh Rai, Resident of Village-Pateri, P.O. and P.S.- Marhaura, District- Saran.
16. Anita Devi, Wife of Late Sanjay Yadav, Resident of Village- Jafari, P.O. and P.S. Ekma, District- Saran.
17. Sarda Devi, Wife of Sudarshan Yadav, Resident of Village- Bhairpatti, P.O. Siswaniya, P.S. Mairganj, District-Gopalganj.
18. Bindu Devii Wife of Rabindr Yadav, Resident of Village- Pegwara, P.S. and P.O.- Pachrukhi, District-Siwan.
19. Sarita Devi, Wife of Vikash Choudhary, Resident of Village-Quarter No. D.T./553 HEC Colony, P.S. and P.O.- Dhurwa, District- Ranchi, Jharkhand.
20. Santosh Kumari, Wife of Uday Shankar Singh, Resident of Village-Uchdih Wajitpur Malhori, P.O.-Bidopur, R.S. District-Vaishali.
21. Mamta Devi, Wife of Mukesh Singh, Resident of Village- Imbrahimpur, P.O. and P.S.- Wasjitpur Kasturi, District- Vaishali.
22. Bhagiya Devi, Wife of Gopi Yadav, Resident of Village- Awadanpatti, P.O.- Badhya, P.S.- Mirganj, District- Gopalganj.
23. Ramashish Yadav, Son of late Basant Yadav, Resident of Village- Rukundipur, P.S. Daraunda, District- Siwan.
24. Sanmato Devi, Wife of late Chaturbhuj Rai, Resident of Village- Rampur Kichani, P.O. and P.S.- Desari, District- Vaishali.
25. Sanmatiya Devi, Wife of Chaturbhuj Rai, Resident of Village- Rampur Kichani, P.O. and P.S. Desari, District- Vaishali.
26. Indra Devi, Wife of Nagendra Yadav, Resident of Village- Chakari, P.O. Rukundipur, P.S. Daraunda, District-Siwan.

... .. Respondent/s

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 24-03-2025

Heard learned counsel for the parties.

2. The present petition has been filed for quashing the
order dated 01.02.2021 passed in Title Suit No. 472 of 2017 by

learned Sub Judge-I, Siwan whereby and whereunder the learned Sub Judge rejected the petition dated 17.03.2020 filed by the plaintiff/petitioners under Order 1 Rule 10(2) of the Code of Civil Procedure (in short “the Code”).

3. At the outset, learned counsel for the petitioner submits that the impleadment petition under Order 1 Rule 10(2) of the Code was filed after the fact was brought to the notice of the plaintiffs/petitioners by the defendants/respondents that the suit was bad for non-joinder of the necessary parties and for this reason the application for impleadment was filed. However, learned trial court rejected the petition observing that the plaintiffs/petitioners have not mentioned why the persons named in the application dated 17.03.2020 are necessary parties or how their impleadment would help in the disposal of the present suit though it has observed that the defendants stated about suit suffering from defect of non-joinder of parties. Learned counsel further submits that the persons who are sought to be impleaded are the legal heirs who have been left to be mentioned and could not be made parties. Therefore, the impugned order could not be sustained and the same be set aside.

4. Learned counsel appearing on behalf of the respondents though opposes the submission, however he

submits that the defendants/respondents have taken a plea in their written statement that the suit was bad for non-joinder of parties as necessary parties were not made defendants. Learned counsel further submits that if the Court is inclined to allow the present civil miscellaneous petition, the same should be subject to heavy cost since the plaintiffs did not file the application for impleadment soon after the filing of the written statement and filed it after closure of the evidence of plaintiff, defendant 1st and 2nd set and when the evidence of defendant 3rd set was being recorded.

5. Having regard to the rival submission of the parties and considering the fact that the defendants have also taken a plea that some persons were not made parties as defendants and were not joined in the suit, the learned trial court ought to have taken this fact into consideration. Though the plaintiffs moved the application for impleadment at quite a late stage but for impleadment of party in a suit stage is immaterial. However, when the plaintiffs themselves are negligent in bringing on record the necessary parties, they must suffer the consequence. Therefore, without further discussion, the impugned order dated 01.02.2021 is set aside and application dated 17.03.2020 is allowed subject to payment of cost of Rs. 10,000/- to be paid to

the answering respondents on the first date of hearing before the learned trial court.

6. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.03.2025
Transmission Date	N/A