

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.740 of 2022**

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Devendra Prasad Sah son of Late Gulab Chandra Sah, resident of Village-Mohanchak Ratanpur @ Chak Shikendar Saidyadpur, Ward No. 22, P.S.-Begusarai Town, District-Begusarai.

... .. Petitioner/s

Versus

1. Satya Narayan Prakash Sahu son of Late Ayodhya Prasad Sahu, resident of Mohalla-Mainchak, Chotti Road Pergana Malki Sub- Division, Sub-Registry, Begusarai.
2. Himansu Shekhar, son of Late Ayodhya Prasad Sahu, resident of Mohalla-Mainchak, Chotti Road Pergana Malki Sub- Division, Sub- Registry, Begusarai.
4. Smt. Manju Devi, W/o Ratan Sah, resident of Mohalla- Mainchak, Chatti Road Pergana Malki Sub- Division, Sub- Registry- Begusarai, District- Begusarai.

... .. Respondent/s

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*Constitution of India---Article 227---Code of Civil Procedure, 1908---Order 1 Rule 10---impleadment of Necessary Party--- petition for quashing the order passed by learned trial court in a Title Suit whereby and whereunder the learned trial court has dismissed the intervenor petition of the petitioner---argument that the learned trial court failed to consider the fact that the petitioner has a vested right in the suit property and, as such, he is necessary party in Title Suit---respondent countered by submitting that intervenor petition was rightly rejected as on one hand, the petitioner is claiming his rights in the suit property being a co-sharer in joint family property and on the other hand, wife of the petitioner purchased the suit property from respondent no.1/defendant no.1, who claimed it to be his exclusive property--- further argument that since the wife of petitioner had already been appearing in the case on the ground of being a purchaser pendente lite, the act of the petitioner in moving the application after lapse of much time is nothing but a ploy to linger the matter and to frustrate the case of the plaintiff/respondent no.4.*

*Held: Once the wife of the petitioner purchased the property from respondent no.1, who claimed it to be his exclusive property which he earlier sold to respondent no.4, the petitioner taking a different plea and feigning ignorance is beyond comprehension--- If the suit properties were ancestral, there was no occasion for the wife of the petitioner to purchase the same from defendant no.1/respondent no.1--- there is issue of contradictory claim through Petitioner's wife admitting the exclusiveness of right of the defendant no.1/respondent no.1 over the suit property--- petitioner has not been able to prove that his presence is necessary to enable the court to effectually and completely adjudicate upon issue and settle the questions involved in the suit--- in effect what the petitioner was seeking in the present case is partition in a suit for declaration of right, title and interest with regard to the suit property and has no right to any relief against the plaintiff/respondent no.4 with regard to controversy involved in the proceeding--- intervenor petition correctly dismissed—impugned order affirmed. (Para 1, 3-5)*

*(2005) 6 SCC 733*

*.....Relied Upon.*

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... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Suresh Kumar Ishwar, Advocate  
For the Respondent/s : Mr. Binod Kumar Singh, Advocate  
Mrs.Vagisha Pragya Vacaknavi, Advocate  
Ms. Amrita Roy, Advocate

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

**Date : 26-07-2024**

The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 14.12.2018, passed by learned Sub-Judge-III, Begusarai in Title Suit No. 286/2008, whereby and whereunder the learned trial court has dismissed the intervenor petition of the petitioner, apart from other relief (s).

2. Briefly stated the facts of the case are that the respondent nos. 1 and 2 entered into an agreement with the respondent no.4 for sale of a land and on the basis of that



agreement, the respondent nos. 1 and 2 executed a sale deed on 29.09.2018 in favour of respondent no.4. But the registration receipt was to be handed over subject to payment of consideration money by the respondent no.4 to respondent nos. 1 and 2 within a week. As the payment was not made as per the agreement and even till 15.10.2008, despite several demands and even after service of legal notice, the respondent nos. 1 and 2 cancelled the sale deed dated 29.08.2018 and executed cancellation deed dated 08.11.2008 which was accepted by the Sub-Registrar, Begusarai. As the respondent nos. 1 and 2 were in urgent need of money, they approached the petitioner to sell their land and matter was finalized. The wife of the petitioner, namely Veena Devi, expunged respondent no.3, purchased the suit land and house of the respondent nos. 1 and 2 on payment of full consideration money on 15.11.2008 vide sale deed nos. 22314 and 789435 dated 15.11.2008. After purchasing the property from the respondent nos. 1 and 2, full possession was handed over to Veena Devi, who came in peaceful possession of the land and the house. Thereafter, respondent no.4 filed Title Suit No.286/2008 seeking declaration of title and delivery of possession with respect to land of Tauzi No.4012, Thana No.389, Khata No.275, Khesra No.790 measuring an area of 12



dhoor situated at Mauza-Miyanchak Ratanpur, Ward No.17, Pergana-Malki, Sub-Division- Begusarai, Anchal and District- Begusarai as described in Schedule-1 of the plaint. It has been claimed that Khesra No.790 is the ancestral property and the names of Darshan Sahu, Dhanichand Sahu and Ranjit Sahu were entered in the cadestral survey and all the properties of the recorded tenants still existed. It further appears that the petitioner and the respondent nos. 1 and 2, who are defendants in the suit, are descendants of common ancestor Ranjit Sahu, who died leaving behind his title and interest to his heirs/legal representatives Dhunman Kumari and his two sons Brij Lal Sahu and Reet Lal Sahu. The petitioner is descendant of Brij Lal Sahu, whereas the respondent nos. 1 and 2 are the descendants of Reet Lal Sahu. The suit land came into possession of the heirs/legal representatives of Brij Lal Sahu and Reet Lal Sahu by way of succession and survivor-ship. Since the total area of Khesra No. 790 was 6 Katha and 9 Dhoor, both the branches got half share each along with old building. The plaintiff/respondent no.4 has filed a suit for declaration of title over an area of 12 Dhoor of Khesra No.790, however, it is claimed it was never allotted to defendant nos. 1 and 2/ respondent nos. 1 and 2 and they have no title and interest over the said area of land. It



further appears that the intervenor-petitioner claims title and possession over an area of more than 2 Katha, which is part of Khesra No.790 along with the share in purchased land of his ancestor. Earlier, the expunged respondent no.3 Veena Devi filed intervenor petition for adding her as party defendant in Title Suit No.286/2008 and her intervenor petition was allowed subject to payment of cost of Rs. 2500/- on 06.04.2013 by the learned Sub Judge-VI, Begusarai. The said Veena Devi filed a petition to waive the cost of Rs.2500/-, but her application was rejected vide order dated 22.11.2013 by the learned Sub Judge-VI, Begusarai. Against such rejection order, the said Veena Devi filed CWJC No.10977 of 2014, which was heard and dismissed by this Court vide order dated 23.02.2016. The said Veena Devi did not deposit a cost of Rs.2500/- in terms of order dated 06.04.2013. The petitioner, coming to know about filing of the title suit by Manju Devi for declaration of tile and delivery of possession regarding the land of Khesra No.790, filed intervenor petition for adding him as a defendant in the said title suit. The learned Sub Judge-III, Begusarai heard and dismissed the intervenor petition of the petitioner vide order dated 14.12.2008, which has been challenged in the present civil misc. petition.

3. The learned counsel for the petitioner submitted



that the impugned order passed by the learned Sub Judge-III, Begusarai is bad in the eyes of law and wrong on facts. The order is illegal and arbitrary and has been passed without considering of the documents available on record. The learned trial court has failed to consider the fact that the petitioner has a vested right as he is tenant and half sharer of Khesra No.790 having share of more than 2 Katha of land and he is in peaceful possession over the land and building of Khesra No.790 and, as such, he is necessary party in Title Suit No.286/2008. The learned trial court has further failed to consider that the petitioner is descendant of Brij Lal Sah, the co-sharer of ancestor of respondent nos. 1 and 2 and, in this manner, the petitioner has right, title and possession over an area of more than 2 Katha of land, a portion of Khesra No.790. The petitioner has also filed Title Suit No.51/2004 in the court of learned Munsif, Begusarai for declaration of title and delivery of possession. The learned counsel further submitted that the learned trial court did not consider the case in its true perspective that the wife of the petitioner is purchaser of the said land from the respondent nos. 1 and 2, who are the real owners of the said land. Thus, learned counsel submitted that the impugned order is not sustainable and the same is fit to be



set aside.

4. *Per contra*, learned counsel for the respondent no. 4 submitted that there is no infirmity in the impugned order and the same does not require any interference. The learned counsel further submitted that the petitioner has taken contradictory positions. On one hand, the petitioner is claiming his rights being the descendant of Ranjit Sahu and being co-sharer with respondent nos. 1 and 2 and on the other hand, wife of the petitioner Veena Devi purchased the suit property from respondent no.1/defendant no.1 Satya Narayan Prakash Sahu. If it were the joint family property and the petitioner was having his rights being a co-sharer, there was no occasion for the wife of the petitioner to purchase the same property from defendant no.1/respondent no.1, who claimed it to be his exclusive property. During the pendency of the suit, the defendant no.1/respondent no.1 has executed sale deed for the suit property in favour of Veena Devi, who was made a party, but later on, she was proceeded *ex-parte*. This *ex-parte* hearing was recalled subject to payment of cost, but she did not pay the cost. The suit property never came in share of the petitioner Devendra Sahu, rather he accepted right, title and interest of Satya Narayan Sahu by getting the sale deed executed from him in





favour of his wife. The learned counsel further submitted that Veena Devi was made party in the present petition as respondent no.3 and after her death, her name was expunged. The learned counsel further submitted that the petitioner has failed to bring on record any interest so as to allow his intervenor petition. If wife of the petitioner has already come on record, the petitioner after her death could claim substitution in her place, but the same could not be done in the present case by orders of this Court as the petitioner has himself made his wife as party respondent in the present petition taking a contradictory plea of his right, title and interest in the suit property on the ground of succession. In his petition before the learned trial court under Order 1 Rule 10 (2) of the Code of Civil Procedure, the petitioner has concealed the fact about purchase of the suit land by his wife and his wife being made party in the said suit. The claim of ignorance of the petitioner about not knowing or having no knowledge about the suit is ludicrous. If the wife of the petitioner had already been appearing in the case on the ground of being a purchaser *pendente lite*, the act of the petitioner in moving the application after lapse of much time is nothing but a ploy to linger the matter and to frustrate the case of the plaintiff/respondent no.4. Thus, learned counsel submitted



that there is no merit in the present petition and the same be dismissed.

5. Having regard to the rival submission, I find some merit in the stand taken by the learned counsel for the respondent no.4. Once the wife of the petitioner purchased the property from respondent no.1, who claimed it to be his exclusive property which he earlier sold to respondent no.4, the petitioner taking a different plea and feigning ignorance is beyond comprehension. If it was all along the case of the petitioner that the suit property was ancestral and he was having right in the same being a coparcener, the petitioner should have impleaded himself at the first instance. Now, the petitioner went to deny the transaction entered into his wife whereby she made the purchase of some property during the pendency of the suit from respondent no.1/defendant no.1. It also transpires from the petition of the petitioner that Veena Devi filed an intervenor petition for being impleaded as party defendant and her intervenor petition was allowed subject to payment of cost and her plea of waiver of cost was rejected by the learned trial court and this rejection order was affirmed by this Court vide order dated 23.02.2016 passed in CWJC No.10977 of 2011. If the suit properties were ancestral, there was no occasion for the wife of



the petitioner to purchase the same from defendant no.1/respondent no.1. It has also come on record that the petitioner has also filed a Title Suit No.51 of 2004 in the court of learned Munsif, Begusarai. Moreover, the suit has been filed by the plaintiff/respondent no.4 for enforcement of her rights under some sale deed against defendant nos. 1 and 2. She has not made the petitioner as party. Whatever decision is taken, it would be *inter se* parties and would not bind the petitioner, who by his own submission has already filed a title suit. Then, there is issue of contradictory claim through his wife admitting the exclusiveness of right of the defendant no.1/respondent no.1 over the suit property. If all things are taken together, I do not think the petitioner has been able to prove that his presence is necessary to enable the court to effectually and completely adjudicate upon issue and settle the questions involved in the suit. Moreover, in effect what the petitioner was seeking in the present case is partition in a suit for declaration of right, title and interest with regard to the suit property.

6. In the case of *Kasturi v. Iyyamperumal & Ors.* reported in *(2005) 6 SCC 733*, the Hon'ble Supreme Court has held that necessary parties are those persons in whose absence no decree can be passed by the court or that there must be a



right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. In the present case, the petitioner has no right to any relief against the plaintiff/respondent no.4 with regard to controversy involved in the proceeding.

7. In the light of the aforesaid discussion, I am of the considered opinion that the petitioner could not be allowed to be impleaded in Title Suit No. 286 of 2008 as his remedy lies elsewhere. Hence, the order dated 14.12.2018 of the learned trial court is affirmed.

8. Accordingly, the instant petition stands dismissed.

**(Arun Kumar Jha, J)**

V.K.Pandey/-

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