

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1793 of 2019

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Ramvaran Sah @ Bhaglu Sah Son of Late Ram Dayal Sah Permanent Resident of Village-
Parari, P.S.- Sitamarhi, District- Sitamarhi, A/P Village- Brahmaul, P.S.- Nanpur, P.O.- Sirsi,
District- Sitamarhi

... .. Petitioner/s

Versus

1. Ashok Kumar Son of Pramod Rai Resident of Village- Parari, P.O.- Bakhri, Circle-
Dumra, District- Sitamarhi.
2. Reena Devi, Wife of Ashok Kumar Resident of Village- Parari, P.O.- Bakhri, Circle-
Dumra, District- Sitamarhi.
3. Shailendra Prasad @ Shailendra Prasad Yadav, Son of Pramod Rai Resident of Village- Parari,
P.O.- Bakhri, Circle- Dumra, District- Sitamarhi.
4. Sagar Devi, Wife of Late Devendra Prasad Resident of Village- Parari, P.O.- Bakhri, Circle-
Dumra, District- Sitamarhi.
5. Chandan Kumar, Son of Late Devendra Prasad Resident of Village- Parari, P.O.- Bakhri, Circle-
Dumra, District- Sitamarhi.
6. Anand Kumar, Son of Devendra Prasad Yadav Resident of Village- Parari, P.O.- Bakhri, Circle-
Dumra, District- Sitamarhi.
7. Ranju Devi, Wife of Kameshwar Prasad Yadav Resident of Kurhar, P.O.- Dhadhi, P.S.-
Naanpur, District- Sitamarhi.

... .. Respondent/s

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The Constitution of India - Article 227 – The Code of Civil Procedure - Principles Governing Impleadment under Order I, Rule 10(2) CPC - scope of Order I, Rule 10(2) CPC, which allows the addition of parties if necessary for adjudicating the dispute (Reliance on:- Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., (2010) 7 SCC 417) - Only necessary and proper parties can be added. (Para 6)

Petitioner Not a Necessary Party in Partition Suit - Partition suits are primarily between co-owners or co-sharers of the property - Petitioner was not a co-sharer but merely claimed khatiyani entry, which does not create ownership rights (Reliance on:- Kasturi v. Iyyamperumal, (2005) 6 SCC 733, which held - Necessary parties are those without whom no effective decree can be passed - Proper parties are those whose presence may aid adjudication - Since the partition suit was between co-sharers, petitioner's claim did not warrant impleadment (Para 8 - 9)

Impleadment Would Change the Nature of the Suit -Petitioner was challenging the title of the plaintiffs and their sale deeds but the validity of sale deeds is not the subject of a partition suit - Court held that allowing impleadment would transform the suit into a title dispute, which is not permissible (Reliance on Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd., (2012) 8 SCC 384). (Para 10).

Petitioner's Remedy Lies in a Separate Suit - Petitioner was advised to file an independent suit challenging the respondents' title, instead of seeking impleadment. (Reliance on Ramesh Hiranchand Kundanmal v. Municipal Corporation of Greater Bombay, (1992) 2 SCC 524) (Para 10)

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7. Ranju Devi, Wife of Kameshwar Prasad Yadav Resident of Kurhar, P.O.- Dhadhi, P.S.- Naanpur, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Umashankar Singh, Advocate
Mr. Kumar Praveen, Advocate
For the Respondent/s : Mr. Arun Kumar, Advocate

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

Date : 16-07-2024

The present Misc. Petition has been filed under Article 227 of the Constitution of India by the petitioner for setting aside the order dated 17.10.2019 passed by the learned Sub Judge, Sitamarhi in Partition Suit No. 442 of 2015 whereby and whereunder the learned trial court rejected the petition dated 08.02.2016 filed by the petitioner under Order 1 Rule 10(2) of



the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') for impleadment of the petitioner as intervenor in the aforesaid partition suit.

02. Briefly stated, the case of the parties as it appears from the record is that the respondents are plaintiffs before the learned trial court and they have filed Partition Suit No. 442 of 2015 for partition of land having *khata no.* 448, *plot no.* 2828, area 53 decimal of *Village-Parari, Thana* No. 286, PS and District-Sitamarhi apart from other lands. *Khata no.* 448, *Plot no.* 2828, area 98 decimal of *Village-Parari* is recorded in the name of petitioner Ramvaran Sah @ Bhaglu Sah. The father of the petitioner namely, Ramdayal Sah died intestate in the year 1958, leaving behind the petitioner, his son, and one daughter, namely Sharda Sahu. An oral partition took place between the petitioner and his sister and separate allotments were made to them. The land allotted in share of Sharda Sahu came to be recorded in the record of right under *Khata No.* 562 and 563, respectively. On 07.02.2016, the petitioner came to know that his *khatiyani* lands were being partitioned by the plaintiffs and defendants of Partition Suit No. 442 of 2015. Thereafter, the petitioner filed intervention application under Order-I, Rule 10(2) of the Code for impleading him as party to the suit. The



plaintiffs filed rejoinder to the petition claiming therein that they have purchased 01 *Bigha* 13 *Kathas* and 03 *Dhurs* of land from Sharda Devi wife of Janki Sah through registered sale deed no. 1163 dated 26.03.1965 and sale deed no. 13405 dated 31.07.1967, respectively. The learned trial court rejected the intervention petition of the petitioner vide order dated 17.10.2019. The said order has been challenged in the present case.

03. Learned counsel further submitted that the impugned order of the learned trial court is not sustainable and it is an erroneous order passed on wrong appreciation of facts. The learned trial court without any material on record made an observation that father of one Muktinath Yadav had moved an application earlier for impleadment, which was rejected on merit and thereafter, the son also filed another application on 10.08.2016, who has now managed Bhaglu Sah, the descendant of *khatiyani raiyat*, and got filed an application for impleadment. Now, this observation is completely without any basis. Furthermore, there has been no challenge by the plaintiffs that *khata* No. 319, *plot* no. 2828 and *Thana* no. 286 is not recorded in the name of petitioner neither the plaintiffs have denied the fact that the petitioner is the son of Ram Dayal Sah.



The petitioner has filed a certified copy of *khatiyan* through list of document on 16.08.2019, still the learned trial court made an observation that petitioner has not filed any chit of paper in support of his case. Learned counsel further submits that sale-deed no. 13405 dated 31.07.1967 purported to have been executed by Sharda Devi shows that *khata* number mentioned therein is old 102 and new *khata no.* 448 is only for 11 *kathas* of land, which has been transferred and it is less than the land claimed by the plaintiffs. The plaintiffs and defendants are in collusion with each other and want to grab the land of the petitioner on the basis of fake, forged and invalid documents. The learned trial court ought to have allowed the petitioner an opportunity to contest the claim of the plaintiffs and defendants with respect to 53 decimal land of plot no. 2828 under *khata no.* 319 as the same belongs to this petitioner. Learned counsel further submitted that the observation of learned trial court on petition filed on behalf of the petitioner is baseless and without any reason and is otherwise bad in law as well as on facts. Learned counsel further submits that the impugned order is completely silent as to whether the petitioner is a necessary or proper party. There is no discussion on this point. Learned counsel further submitted that this High Court in a number of



decisions has held that subject to limitation and bonafide of the parties etc., the court could normally allow the application for impleadment, if such person is found to be a proper party. Thus, the learned counsel submitted that the impugned order has been passed by the learned trial court overlooking the material facts that the petitioner has interest in the suit proper and he is not only a 'proper' but also a 'necessary' party and if any final judgment is passed in future in absence of the petitioner, it will affect the right, title and possession of the petitioner which would cause irreparable loss to him and at the same time compel him to file another suit for enforcing his right leading to multiplicity of litigation. Hence, the order impugned is erroneous and needs interference by this Court.

04. Learned counsel appearing on behalf of respondents submitted that there is no infirmity in the impugned order and the petition of the petitioner has been rightly rejected by the learned trial court. Learned counsel further submitted that aforesaid *khesra/plot* no. 2828 which is the subject matter in this case has been purchased from one Sharda Devi through registered sale deed dated 31.07.1967 for area 11 *kathas* and the vendee of the sale deed Pramod Rai filed Misc. Case No. 152 of 1974 under Section 10(2) of the Consolidation Act before the



Consolidation Officer, Dumra and the Consolidation Officer, Dumra on the basis of registered sale deed passed order for correction of survey entry and, thus, the name of Pramod Rai and his brother stood recorded in the *khatian* and they have been paying rent and getting rent receipt on the basis of mutation order. Learned counsel further submitted that petitioner has neither got title nor possession over *Plot no. 2828* of *khata no. 319* and as such the learned trial court vide order dated 17.10.2019, rightly rejected the intervention petition of the petitioner. Learned counsel further submitted that one Mukti Nath Yadav has also filed a petition to implead him as a party in the said Partition Suit No. 442 of 2015, but the same was rejected vide order dated 02.06.2017 and thereafter, he got filed intervention petition through Manglu Sah @ Bhaglu Sah who sought to get himself added as party, which has been rejected by the learned trial court since he did not produce any paper in support of his case. Learned counsel further submitted that a compromise petition has been filed in the partition suit and the intervenor/petitioner has got no case to be impleaded in this case in which parties have already compromised the matter, which is still pending for passing order on the compromise petition. Thus, the learned counsel submitted that there is no infirmity in



the impugned order and the same requires to be sustained.

05. I have given my thoughtful consideration to the different aspects of the matter. 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.”

06. Obviously, the court has got ample power to add or strike out the name of any person at any stage of the proceeding. It is entirely at the discretion of the court and the said discretion is to be exercised by the court for effectually and completely to adjudicate upon and settle all the questions involved in the suit. 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*** in Para-22 has held as under:-

“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.”

(Underline supplied)

07. Order 1 Rule 10(2) of the Code creates an exception to the general rule that the plaintiff is the master of his suit, ‘*dominus litis*’, and no person could claim to be made a party against the wishes of the plaintiff. However, the discretion of the court under Order 1 Rule 10(2) of the Code is subject to



certain limitation and such discretion could be exercised against the wishes of the plaintiff only in case a party is found to be a necessary or proper party. Thus, the courts can order for impleadment even against the wishes of the plaintiff if a party has a direct and legal interest in the subject matter of the property. With regard to aforesaid proposition, reliance could be placed on the decisions of Hon'ble Supreme Court rendered in the case(s) of *Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.*, reported in (2012) 8 SCC 384 and *Ramesh Hiranchand Kundanmal v. Municipal Corporation of Greater Bombay*, reported in (1992) 2 SCC 524.

08. Further, the Hon'ble Supreme Court in the case of *Kasturi v. Iyyamperumal*, reported in (2005) 6 SCC 733, 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. On the other hand '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.

09. From the facts of the present case, it is apparent



that plaintiffs and defendants are contesting a partition suit and the suit property is stated to be purchased by father of the plaintiffs through two registered sale deeds in the year 1965 and 1967, respectively. The petitioner claims his impleadment on the basis of *Khatiyani* entry which stands in his name but what would be the status of the petitioner in a partition suit which has been filed for partition of the suit property between the co-sharers who claim that they are descendants from a common ancestor? Whether the sale-deeds are forged or fabricated is not the subject matter of partition suit as original parties to the Partition Suit No. 442 of 2015 are not having any dispute over the said issue. Moreover, the entry in *Khatiyani* does not, *ipso facto*, creates any title in favour of entry holder.

10. So far as partition suit of the plaintiffs and defendants is concerned, the petitioner has no right in the suit of the parties and he is a stranger to the proceeding. The court would not be handicapped in absence of the petitioner to dispose of the proceeding before it. So, the petitioner is not a 'necessary' party. Whether there is any requirement of the petitioner for the court to enable it effectually and completely to adjudicate upon and settle all the questions involved in the suit is another aspect of the matter. The petitioner challenges the title of the parties.



The question of validity of sale-deed is not an issue before the court and hence, the presence of the petitioner in the partition suit would not serve any useful purpose and will not be necessary or helpful for the court to completely adjudicate upon the questions involved in the suit. The impleadment of the petitioner in the suit would result in completely changing the nature of suit and challenge to title of the parties could not be effected in such manner in a suit filed for partition. If the petitioner claims title based on *Khatiyan* entry, he cannot be permitted to intervene in the suit of the plaintiffs filed for partition against co-sharers. In these circumstances, the petitioner would be required to bring an independent suit since he has an entirely different cause of action. The petitioner claims himself to be in *khatiyani raiyat* and further claims the sale-deeds of the father of the plaintiffs to be forged, fabricated and void documents. In these circumstances, the petitioner cannot be allowed to implead himself as a defendant against the wishes of the plaintiffs.

11. In the light of aforesaid discussion, I do not find any infirmity in the impugned order which, though is not happily worded, yet has arrived at a finding which could not be faulted. Hence, the impugned order dated 17.10.2019 passed by the



learned Sub Judge, Sitamarhi in Partition Suit No. 442 of 2015
is hereby affirmed.

12. Accordingly, the present Civil Misc. Petition
stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	25.06.2024
Uploading Date	16.07.02024
Transmission Date	NA

