

IN THE HIGH COURT OF JUDICATURE AT PATNA

Rajiv Ranjan Verma and Others
vs
Shailesh Chandra @ Panna Lal and Others

Civil Miscellaneous Jurisdiction Number 482/2016

11th Day of April, 2025

(Hon'ble Mr. Justice Arun Kumar Jha)

Issue for Consideration

An issue with regard to correctness of an Order passed by in an application filed by the petitioner and others under Order I Rule 10(2) r/w Section 151 of the Code of Civil Procedure, 1908 for being impleaded as intervenors-defendants in the suit was rejected.

Headnotes

Code of Civil Procedure, 1908—O. I, R. 10(2)—addition of party—petitioners wanted to be impleaded as intervenors in the suit in Court below—learned Court below rejecter their application—sale deed was executed and registered in 1963, the petitioners were having the notice of it but chosen not to be impleaded at that particular time—intervenor does not fall in the categories of either as Necessary Party or Proper Party.

Held: claim of intervenors/petitioners is independent of claim made by the plaintiff and if the intervenors are already party in the partition suit, they can always make a prayer to bring the suit property of present title suit as one of the joint family properties in terms of their claim—onus would lies on petitioner—Court does not find intervenors necessary or proper for the adjudication of the suit of the plaintiff—no error in impugned order—petition dismissed.

(Paras 6, 10 and 12)

Case Law Cited

Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana & Anr., (2012) 1 SCC 656; Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue, AIR 1963 SC 786; Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., (2010) 7 SCC 417—Relied Upon.

Bindeshwari Chaudhary vs Dr. Sheo Nandan Upadhyaya & Ors., AIR 1973 Pat 347; Jugraj Singh & Anr vs Jaswant Singh & Ors, AIR 1971 SC 761; Singheshwar Rai vs Babulal Rai & Anr., AIR 1980 Pat 187; Razia Begum v. Sahebzadi Anwar Begum, AIR 1958 SC 886; Kasturi v. Iyyamperumal, (2005) 6 SCC 733—Referred To.

List of Acts

Code of Civil Procedure, 1908

List of Keywords

Order 1 Rule 10(2) r/w Section 151 of the Code of Civil Procedure, 1908; intervenors; revisional survey; amendment application; partition; suit property; partition of the suit property; all the questions involved in the suit; questions involved between the parties to the suit; all the questions involved in the suit between parties thereto; addition of party; presumption of a property; joint family property; registered deed; necessary party; proper party.

Case Arising From

Title Suit No. 469 of 2001; dated of order 16.03.2016 passed by the learned Sub-Judge-III, Ara

Appearances for Parties

For the Petitioners: M/s. Nagendra Rai, Advocate; Satyapal Singh, Advocate; Navin Nikunj, Advocate; Koshalendra Rai, Advs.

For the Res. No. 1: Mr. Ajay Kumar Thakur, Advocate; Mrs. Vaishnavi Singh, Advocate; Mr. Ritwik Thakur, Advocate

Headnotes Prepared by: Abhas Chandra

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.482 of 2016

1. Rajiv Ranjan Verma Son of late Awadh Prasad
2. Ashish Kumar
3. Abhishek Kumar, both Sons of late Yashwant Kumar Verma
4. Uma Shankar Gupta Son of late Lakhi Prasad
5. Satyendra Kumar Son of late Gaya Prasad
6. Binod Kumar Verma
7. Arbinda Kumar Verma, both Sons of late Kaushal Kumar Verma
8. Sheo Kumar Verma@ Manoj Kumar Verma Son of late Awadh Prasad
All resident of Village- Baruhi, Police Station- Sahar, District- Bhojpur,
Present Address Jail Road, Charkhambha Gali, P.O. Ara, P.S. Ara Town,
District- Bhojpur.

... .. Petitioners

Versus

1. Shailesh Chandra @ Panna Lal Son of late Nathuni Sah Resident of Village- Baruhi, Police Station- Sahar, District- Bhojpur, at Present resident of Ghura Mohalla Gali, Chaudhariyan, Police Station- Ara Town, District- Bhojpur.
2. Janki Kunwar Wife of late Rajendra Prasad Resident of Village- Baruhi, Police Station- Sahar, District- Bhojpur, at Present resident of Ghura Mohalla Gali, Chaudhariyan, Police Station- Ara Town, District- Bhojpur.
3. Sushila Devi Wife of Badri Sonar, Daughter of late Rajendra Prasad Resident of Village- Saray, District- Chapra, at Present resident of Mahadeva Road, Near Baghwa Gali, P.S. Ara Town, District- Bhojpur.
4. Chandrawati Devi Wife of Kashi Nath Sonar, Daughter of late Rajendra Prasad Resident of Village- Naya Bhojpur, P.S. Dumraon, District- Buxar at Present Mahadeva Road, Near Baghwa Gali, Police Station- Ara Town, District- Bhojpur.
5. Durgawati Devi Wife of Dharmendra Sonar@ Kallu @ Daughter of late Rajendra Prasad Resident of Village- Bara Basant, P.S. Ara M District- Bhojpur at Present resident of Mohalla- Ghura Gali, Chaudhariyana, Police Station- Ara Town, District- Bhojpur.
7. Santosh Kumar
8. Satish Kumar, both Sons of Achhaibar Prasad Both Resident of Village- Chenari, Police Station- Chenari, District- Rohtas.
9. Viswanath Singh Son of late Ishwar Dayal Singh Resident of Village- Bisunpura, P.O. Baruhi, P.S. Sahar, District- Bhojpur.
10. Sudhir Kumar Singh Son of Tej Bahadur Singh Resident of Village- Baruhi, P.O. Baruhi, Police Station- Sahar, District- Bhojpur.
11. Rajeshwari Singh Son of late Nihora Singh Resident of Village- Bisunpura, P.O. Baruhi, P.S. Sahar, District- Bhojpur.
12. Rajnandan Prasad



- 13. Satish Prasad
- 14. Ramjee Prasad
- 15. Rajdeo Prasad
- 16. Ram Chandra Prasad
All Sons of Vishwanath All Resident of Village- Bishunpura, P.O. Baruhi,
P.S. Sahar, District- Bhojpur.
- 17. Mis Maini Wife of late Nirmal Kumar Singh
- 18. Shekhar Kumar
- 19. Vikki Kumar Both Sons of late Nirmal Kumar Singh
- 20. Bhuari Kumari Minor daughter of late Nirmal Kumar Singh All resident of
Village- Baruhi, Police Station- Sahar, District- Bhojpur.
- 21. Surendra Kumar Gupta Son of late Lakhi Prasad Resident of Mohalla-
Satgharwa, Police Station- Ara Town, District- Bhojpur.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Nagendra Rai, Advocate Mr. Satyapal Singh, Advocate Mr. Navin Nikunj, Advocate Mr. Koshalendra Rai, Advocate
For the Res. No. 1	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 11-04-2025

The present petition is directed against the order dated 16.03.2016 passed by the learned Sub Judge-III, Ara in Title Suit No. 469 of 2001, whereby and whereunder the application filed by the petitioners and others Order 1 Rule 10(2) r/w Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘the Code’) for being impleaded as intervenors-defendants in the suit was rejected.

02. Briefly stated, the facts of the case as it appears from the record, are that the respondent no. 1 is the plaintiff



before the learned trial court, who has filed a suit seeking declaration for correction in revisional survey *khatiyān* with regard to suit property having old *Khata* No. 794, old *Khesra* No. 2668 (New *Khata* No. 548, new *Khesra* No. 3510) area 83 decimal. The plaintiff filed the suit for declaration that the suit property is the purchased property of two brothers, i.e., the plaintiff/respondent no. 1 and his brother Rajendra Prasad (original defendant no.1) and further for declaration that entry in the revisional survey record especially only in the name of original defendant no. 1 was wrong. Subsequently, in CWJC No. 19776 of 2011 vide order dated 20.01.2014 passed by a Co-ordinate Bench of this Court, the amendment application of the plaintiff was allowed whereby and whereunder the plaintiff sought relief of partition in the suit property. While the suit of the plaintiff has been pending, the petitioners and respondent no. 21, filed an application seeking impleadment and the plaintiff contested their claim by filing a rejoinder. The learned trial court, after hearing the parties, decided the said application against the intervenors vide order dated 16.03.2016. The said order is under challenge before this Court.

03. Learned counsel, Mr. Nagendra Rai, appearing on behalf of the petitioners submitted that the impugned order is



not sustainable and it has been passed against the facts and the law applicable. Mr. Rai further submitted that the plaintiff/respondent no. 1 has filed the suit for declaration that the revisional survey entry in the name of his brother, Rajendra Prasad, with regard to suit property was wrong, but the said suit property is the joint family property of the petitioners, plaintiff and the defendants. Mr. Rai further submitted that one Nathuni Sah was the common ancestor of the parties and he had six sons, namely (i) Awadh Prasad, (ii) Lakhi Prasad, (iii) Gaya Prasad, (iv) Siyaram Prasad, (v) Rajendra Prasad and (vi) Shailesh Chandra @ Panna Lal. Nathuni Sah died in the year 1955. After death of Nathuni, Lakhi Sah became the *Karta* and manager of the property and 3-4 years thereafter, only Siyaram Sah got separated from his brothers and other five brothers remained in jointness and Lakhi Sah continued as *Karta* of the family. Mr. Rai further submitted that Lakhi Sah purchased the suit property from the joint family fund in the name of his younger brothers, plaintiff and Rajendra Prasad on 16.01.1963, but the plaintiff has not made the other members of the joint family as party in the present suit and has brought the suit only against Rajendra Prasad. The said Rajendra Prasad made an averment in Title Suit No. 39/1966/14/1968 that five brothers were joint and this



admission during evidence has been made much after the purchase of the property in 1963. Mr. Rai further submitted that relationship between the parties is admitted and it is clear that the intervenors have a direct interest since the plaintiff has been claiming title and partition of the suit property and the court has to decided who is the real owner. Mr. Rai further referred to the decision of this Court reported in ***Bindeshwari Chaudhary vs Dr. Sheo Nandan Upadhyaya & Ors.***, reported in ***AIR 1973 Pat 347*** wherein discussing the scope of Order 1 Rule 10(2) of the Code, it has been observed that to say that "all the questions involved in the suit" must be read as "questions involved between the parties to the suit" is to read into the provision of law something which is not there and as if it read "all the questions involved in the suit between parties thereto". In the said decision, the learned Single Judge referred to the decision of Hon'ble Supreme Court in the case of ***Jugraj Singh & Anr vs Jaswant Singh & Ors.***, reported in ***AIR 1971 SC 761*** and held that narrower interpretation was not accepted by the Hon'ble Supreme Court and further held that even a proper party who is directly interested in the property involved can be added as a party. Mr. Rai next referred to the decision of this Court in the case of ***Singheshwar Rai vs Babulal Rai & Anr.***,



reported in *AIR 1980 Pat 187*, wherein relying on the decision of Hon'ble Supreme Court in the case of *Razia Begum v. Sahebzadi Anwar Begum*, reported in *AIR 1958 SC 886*, the learned Single Judge allowed the addition of party holding that wishes of the plaintiff are immaterial if the Court considers presence of the party necessary for adjudicating on all the issues involved in the suit without changing its nature. It was further held that expression the issues involved in the suit cannot be read as issues involved between the parties. Learned counsel, thus, submitted that issues involved in the suit of the plaintiff cannot only be considered as the issue involved between the parties as the intervenors have been able to show a direct interest in the subject matter of the suit and purpose of Order 1 Rule 10(2) of the Code will be defeated if the intervenors are not impleaded as party in the present suit.

04. Learned counsel, Mr. Ajay Kumar Thakur, appearing on behalf of respondent no.1 submitted that there is no infirmity in the impugned order and the same does not require interference. Mr. Thakur further submitted that the property in question is the self-acquired property of the plaintiff and his brother Rajendra Prasad. Mr. Thakur further submitted that the petitioners sought their impleadment by making wrong



averment. Even a wrong submission has been made before the Co-ordinate Bench at the time of hearing that property in question formed part of the partition suit pending between the parties being Title Suit No. 215 of 1987. After death of their parents, all the brothers separated in the year 1960 and partition took place by metes and bounds and they started purchasing property in their names. In this manner, the instant suit property was purchased by the plaintiff/respondent no. 1 and his brother Rajendra Prasad through a registered sale deed and both were having half share in the said property. The petitioners are the descendants of Awadh Prasad and they even got their entire property divided in their family through a registered Partition Deed No. 792 dated 30.04.1985 which would go to show that Awadh Prasad and his sons internally partitioned the property which fell in the share of Awadh Prasad. The suit property was neither made part of the partition between them in the year 1985 nor in title suit filed in the year 1987. Mr. Thakur further submitted that the present suit is not a suit for partition rather it is a declaratory suit that the suit plot was purchased jointly by the plaintiff and his brother Rajendra Prasad and revisional survey entry was wrongly made in the name of Rajendra Prasad and the same is not correct and the defendants cannot be



exclusive owner of the property in question of Schedule K property. The said prayer was further amended seeking the relief that by appointment of Survey Knowing Pleader Commissioner, the half portion of the land belonging to the plaintiff be demarcated and the same should be demarcated half and half in between the plaintiff and defendant and also for issuance of a prohibitory order for not transferring the suit land during the pendency of the suit. Earlier the plaintiff has been doing his separate business of selling ornaments, which was their family business and subsequently, he got a government job and now he has superannuated. In the year 1963, the plaintiff and one of his brothers, namely late Rajendra Prasad who was also doing his separate business, purchased a piece of land for which consideration amount of Rs. 900/- each was paid by the plaintiff and Rajendra Prasad and thereafter, sale deed was registered in their favour by the landlord Kaushalesh Kumar Singh. The said landlord sold different properties to the other brothers of the plaintiff individually in their names and they have entered into several transactions individually. Mr. Thakur referred to nine such sale deeds which have been executed by the landlord in favour of the plaintiff, Rajendra Prasad, Awadh Prasad and Lakhi Sah in which suit property has also been mentioned. Learned counsel reiterated that the



partition suit in the family is already pending being Partition Suit No. 215 of 1987 for making partition by metes and bounds wherein self-acquired property of the plaintiff and Rajendra Prasad is not the subject matter and the intervenors are also parties there and they can always apply for adding certain piece of land as every plaintiff is defendant and every defendant is plaintiff in a partition suit. Thus, Mr. Thakur submitted that if the petitioners are still aggrieved, it is open for them to file a separate suit or to get the suit property included in the aforesaid partition suit. But, so far as the present suit is concerned, the petitioners are neither proper nor necessary parties and whoever are necessary parties have been made as defendants in the present suit. Mr. Thakur further submitted that, moreover, the sale deed is existing in the name of two persons, the plaintiff and his brother Rajendra Prasad and it is upon the intervenors-petitioners to show that the said property is joint family property and for the same, they can file their independent suit. Mr. Thakur further submitted that the authorities cited by the learned counsel for the petitioners are not at all applicable in the present facts and circumstances as in the cases cited, the intervenors have direct interest but in the present case, the intervenors cannot claim their impleadment seeking partition in a



declaratory suit filed by the plaintiff seeking declaration with regard to self-acquired property. Thus, Mr. Thakur submitted that there is no illegality in the impugned order and the same needs to be sustained.

05. I have given my thoughtful consideration to the rival submission of the parties.

06. At the outset, the fact which needs attention is that the suit property has been purchased by way of registered sale deed in favour of the plaintiff/respondent no. 1 and his brother Rajendra Prasad whose descendants are respondent nos. 2 to 5 herein. There could be no presumption of a property for being joint family property if the conveyance has been made in the individual name and registered sale deed has been executed. The claim of the petitioners that plaintiff was minor when this registered deed was executed is not sustainable in view of the specific finding recorded by the learned trial court in the impugned order that the plaintiff was not minor even in the year 1961. Moreover, once a sale deed in the individual names of the plaintiff and his brother has been executed and registered, it tantamount to notice to the whole world. The Hon'ble Supreme Court in the case of *Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana & Anr.*, reported in (2012) 1 SCC 656 made the



following observations with regard to nature of a registered document:-

“Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act)



as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”

Since the sale deed was executed and registered in 1963, the petitioners were having the notice of the same and still, they did not take any pains earlier and sought impleadment in the suit of the plaintiff though this fact was known to them since all along.

07. Now, 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.”*

08. The aforesaid provision provides for a judicial discretion and it is for the Court to see that whether it requires



the presence of the intervenors for effectually and completely to adjudicate upon and settle all the questions involved in the matter. In the instant case, the intervenors could not claim himself either to be 'necessary party' or the 'proper party' since the Hon'ble Supreme Court in the case of ***Kasturi v. Iyyamperumal***, reported in **(2005) 6 SCC 733**, has explained that who are the necessary and proper party and 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. As such, the intervenors/petiitoners do not fall in either category. Further, the Hon'ble Apex Court in the case of ***Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue***, reported in ***AIR 1963 SC 786*** held that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the



question involved in the proceeding.

09. 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.”

10. Furthermore, the claim of the interevenors/petiitoners is independent of the claim made by the



plaintiff and if the intervenors are already parties in the partition suit, they can agitate their claim before the said court where the partition suit is pending but they cannot raise the claim to make them party in the declaratory suit of the plaintiff against the specific pleading and document of the plaintiff. What the intervenors have been claimed is their right to enforce partition with regard to joint family property, they can always exercise their option and chart their independent course by filing a partition suit with onus upon them to prove the suit property existing in the names of plaintiff and his brother to be joint family property. As already observed, if the intervenors are already party in the partition suit, they can always make a prayer to bring the suit property of present title suit as one of the joint family properties in terms of their claim. Again onus would lie upon them. But, in the present case, I do not find the presence of the intervenors necessary or proper for the adjudication of the suit of the plaintiff.

11. In the light of aforesaid facts and circumstances and discussion made hereinbefore, I do not find that the learned trial court has committed any error of jurisdiction while passing the impugned order dated 16.03.2016 in Title Suit No. 469 of 2001. Hence, the same is hereby affirmed.



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

13. Pending application(s), if any, stands disposed of.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	30.01.2025
Uploading Date	
Transmission Date	NA

