

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.185 of 2023

Meena Devi, Wife of Late Kapildeo Singh, Resident of Village- Nuruddinpur, P.S.- Khushrupur, District- Patna, Presently residing at Chak Chanda, P.S.- Khushrupur, District- Patna.

... .. Petitioner/s

Versus

1. Kailash Devi Wife of Late Bhagwat Prasad, Resident of Khushrupur, P.O. and P.S.- Khushrupur, District- Patna.
2. Gauri Shankar Prasad Son of Late Bhagwat Prasad, Resident of Khushrupur, P.O. and P.S.- Khushrupur, District- Patna.
3. Smt. Geeta Devi Wife of Rajeshwar Prasad Daughter of Late Bhagwat Prasad, Resident of Murcha Road, Begampur P.S.- Begampur, Patna City, District- Patna.
4. Smt Reeta Devi Daughter of Late Bhagwat Prasad, Resident of Saidpur, P.S.- Kadamkuan, and District- Patna.
5. Smt. Sunita Devi @ Munni Wife of Sri Sharan Sah, Daughter of Late Bhagwat Prasad, Resident of Jamui Bazaar, P.S.- Jamui, District- Jamui.
6. Smt. Ranjana Devi Wife of Late Vijay Shankar, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
7. Vishal Kumar Son of Late Vijay Shankar, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
8. Vishwash Kumar Son of Late Vijay Shankar, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
9. Vivek Kumar Son of Late Vijay Shankar, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
10. Indu Devi Wife of Late Mulshankar Prasad, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
11. Manish Kumar Son of Late Mulshankar Prasad, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
12. Nisha Kumari Wife of Sri Ashish Kumar, Daughter of Late Mulshankar Prasad, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
13. Ranu Kumari Wife of Ravi Shankar Gupta, Daughter of Late Mulshankar Prasad, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
14. Rani Kumari Daughter of Mulshankar, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
15. Sri Thakur Satyadeo Swami Ji Thakurwari, Village- Chakchanda, Baikatpur, P.S.- Khushrupur, District- Patna,
16. Lakshmi Devi Wife of Krishna Dutta, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
17. Sunil Kumar @ Papu Son of Sofa Late Krishna Dutta, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
18. Sudhir Kumar @ Munna Son of Sofa Late Krishna Dutta, Resident of Chak



Husain, P.S.- Khushrupur, District- Patna.

19. Vinod Kumar Son of Sofa Late Krishna Dutta, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
20. Punam Devi Wife of Late Sharwan Kumar, Daughter of Late Krishna Dutta, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
21. Vivek Kumar Son of Late Sharwan Kumar Grand Son of (Nati) of Late Krishna Dutta, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
22. Nikhil Kumar Son of Late Sharwan Kumar Grand Son of (Nati) Late Krishna Dutta Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
23. Barsha Kumari @ Babli Daughter of Late Sharwan Kumar Grand Daughter of (Nati) of late Krishna Dutta, Resident of Chak Husain, P.S.- Khushrupur, District- Patna.
24. Smt. Manju Devi Wife of Amarnath Sah Daughter of Late Krishna Dutta, Resident of Mohall- Dalu Chalk, P.S. Khagoal, District- Patna.
25. Munni Kumari Wife of Sunil Kumar Daughter of Late Krishna Dutta, Resident of Chailly Tal Maharajganj P.S.- Alamganj, District- Patna.
26. Guriya Kumari Wife of Ajay Kumar Sah Daughter of Late Krishna Dutta, Resident of Chaily Tal Mahrajganj, P.S.- Alamganj, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Advocate
Ms. Pratibha Gupta, Advocate
For the Respondent 2 : Mr. Anupam Prabhat Shrivastava, Advocate
For the Respondents 1,5 to 10, 13 & 14 : Mr. Ram Anuj Prasad Singh, Advocate
Mr. Ashok Kumar, Advocate

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

Date : 06-05-2025

The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 12.12.2022 passed in Misc. Case No. 227/1996 by learned Additional District Judge-XIV, Patna whereby and whereunder the petition of the intervener/petitioner dated 30.07.2010 filed under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') has been



rejected along with another petition filed by some other persons under Section 151 of the Code.

2. Shorn of unnecessary details, the case of the petitioner is that she had purchased the land bearing Khata No. 145, Khesra No. 3205 area 4275 sq.ft. (3 decimals), Khata No. 763, Khesra No. 3206 area 5 decimals and Khata No. 145, Khesra No. 3207 area 6 decimals on 16.10.2008 from one Krishna Dutta, son of Late Shiv Lal Sao vide a registered sale deed. The petitioner came to know about Misc. Case No. 227/1996 between Bhagwat Prasad and Krishna Dutta, which has been going on with regard to partition of joint family property in the light of judgment/order dated 10.10.1996 passed in Civil Appeal No. 7475/1994 by the Hon'ble Supreme Court wherein the Hon'ble Supreme Court modified the decree passed by the High Court with certain directions. The land in question purchased by the petitioner fell in share of Krishna Dutta being part of Schedule II property of Partition Award and the nature of land is 'ditch'. The petitioner claims as per schedule of Partition Award and direction of the Hon'ble Supreme Court, the land came in possession and ownership of Krishna Dutta and the petitioner purchased the same after payment of consideration amount and came into possession of said land. After coming to



know about the pendency of Misc. Case No. 227/1996, the petitioner filed a petition under Order 1 Rule 10 (2) of the Code for adding her as party in Misc. Case No. 227/1996. A rejoinder to the petition was filed on behalf of the respondents opposing the prayer of the petitioner. The learned Additional District Judge after hearing the parties dismissed the petition dated 30.07.2010 finding no merit in it vide order dated 12.12.2022. The said order is under challenge before this Court.

3. Prior to entering into the submission of the parties, it would be beneficial to take stock of chronology of the events leading to institution of Misc. Case No. 227/1996.

4. It appears from the records that there was dispute over partition of joint family property amongs the sons of Late Benga Sao, namely Bhagwat Prasad and Krishna Dutta. With the intervention of well wishers of the family, the matter was referred to arbitration and, accordingly, the arbitrators (Panchas) delivered the award on 26.06.1970 and the same was registered on 04.08.1970. Thereafter, Bhagwat Prasad and Sri Thakur Satyadeo Swami Jee Maharaj under the Sewait Bhagwat Prasad filed Title Suit No. 54 of 1977/58 of 1978 in the court of learned Sub Judge-2nd, Patna to make the registered award rule of the court and Bhagwat Prasad got ex-parte decree dated 25.07.1978.



Krishna Dutta filed Misc. Case No. 71/1979 for setting aside the ex-parte decree dated 25.07.1978, which was subsequently set aside vide order dated 13.12.1980 and Title Suit No. 54 of 1977/58 of 1978 was restored. Thereafter, vendor of the petitioner, namely Krishna Dutta filed Misc. Case No. 383 of 1986 in the High Court against the judgment of learned trial court making award as part of decree, but the same was dismissed by the High Court vide judgment and decree dated 28.04.1994. Then Krishan Dutta filed Civil Appeal No. 7475/1994 before the Hon'ble Supreme Court against the order of the High Court.

5. It further appears a compromise petition was filed before the Hon'ble Supreme Court and the terms of compromise were accepted and the Hon'ble Supreme Court passed the order dated 10.10.1996 with following stipulations :

“The parties have agreed that the award or the decree in terms of award should be modified, in that (i) all the house/building under the award of February, 1970 shall be divided equally i.e., 50:50 between the two brothers (ii). all lands which are the subject matter of the award will remain divided as per the schedules in the award, meaning thereby the award in that behalf will be implemented fully, (iii) the right of Shebaitship conferred under the award in



favour of one party will be altered and will now be divided half and half, i.e., one party will have six months in a year and another party will have the remaining six months in a year subject to hereditary rights in relation to schedule (III) of the award. This is the extent to which the decree under award will stand modified. Since the parties have agreed that all houses /buildings under the award shall be divided half and half between the two brothers, the division by metes and bounds will have to be effected through a person who may be nominated by District judge, Patna. We, therefore, direct the District Judge, Patna to nominate a person whom he considers proper to give effect to the decree in regard to the division of houses /buildings. Insofar as lands are concerned, we are told some of the lands have been sold by one party or the other and some remain which are subject matters of the award. As far as those lands are concerned, the person to be nominated by District Judge will also ensure that possession of those lands is transferred to the respective parties as per the stipulation in the decree made pursuant to the award. This is the modified decree which will have to be implemented and settles the rights of the two brothers. The partition should be effected as soon as possible and at the latest within a period of three months. Both parties will deposit the cost of effecting and implementing



the partition under the modified decree on 50:50 basis as may be directed by the District Judge Patna.

The parties have signed the terms of the modified decree. On behalf of the appellant, his son, who has authority, has signed the terms. His counsel also states that the terms were explained to him and he has agreed to the same. He is present in person and so is the respondent, Bhagwat Prasad. Their counsel have also signed the terms. In regard to third party rights, if any, if parties desire to take any legal action against the third parties, they would be free to do so, if so advised.”

6. The Misc. Case No. 227/1996 has been instituted before the learned District Judge, Patna in compliance of the directions of the Hon’ble Supreme Court contained in the order dated 10.10.1996 passed in Civil Appeal No. 7475/1994.

7. It further transpires that both Krishna Dutta and Bhagwat Prasad died and the litigation is being carried forward by heirs/legal representatives of the above-named two brothers.

8. The learned counsel for the petitioner submitted that the award delivered by the *panchas*/arbitrators on 26.06.1970 put the properties in two schedules. The immovable property described in Schedule I was allotted to Bhagwat Prasad and immovable property described in Schedule II was allotted to



Krishan Dutta. The land in question which has been purchased by the intervener/petitioner fell in Schedule II property of the award and as per direction/modified decree of the Hon'ble Supreme Court, the Schedule-II land was in possession and ownership/share of Krishna Dutta who partitioned it by metes and bounds with his sons and daughters and the land in question came in exclusive possession of Krishna Dutta. The intervener/petitioner is *bonafide* purchaser of the land in question and after her purchase, she is coming into its possession.

9. The learned counsel for the petitioner further submitted that the petitioner came to know that the Pleader Commissioner, who was earlier appointed in Misc. Case No. 227/1996, submitted a report in terms of directions of the Hon'ble Supreme Court and the land in question was shown in the share of Krishna Dutta but the said Pleader Commissioner left the job without completing the commission. Thereafter, another Pleader Commissioner was appointed. Even this Pleader Commissioner filed an incomplete report with objectionable material and this incomplete report was objected by Krishna Dutta. Before the report could be accepted, the Pleader Commissioner died. Krishna Dutta also died during the



pendency of Misc. Case No. 227/1996 and as he has already partitioned by metes and bounds with his children during his life time and he has already sold his share to the petitioner, no one was willing to take interest in prosecuting Misc. Case No. 227/1996 and no one was ready to protect the interest of the petitioner, the petitioner validly claimed her impleadment in Misc. Case No. 227/1996. However, the learned Additional District Judge did not take this fact into consideration that vendor of the petitioner has already died and there is no person to protect the interest of the petitioner and wrongly dismissed the application for impleadment filed by the petitioner observing that the petitioner was at liberty to take appropriate legal recourse as far as her rights against her vendor.

10. The learned counsel for the petitioner further submitted that the learned Additional District Judge did not further consider the provisions of Order 26 Rule 10 (2) of the Code in the facts of the case that after death of Pleader Commissioner, he could not be examined on the point of his report which had already been challenged and the said report could not be accepted. For this reason, Misc. Case No. 227/1996 itself is liable to be dismissed.

11. The learned counsel for the petitioner further



submitted that the learned Additional District Judge has wrongly held that as per award/decreed any transfer of land which are subject matter of the suit by any party shall be declared void and there was no prohibition on vendor from selling the property. The learned counsel also pointed out the fact that the first Survey Knowing Pleader Commissioner was not removed but he left. The report of the first Pleader Commissioner was not challenged and it became final as objections were also rejected. Thereafter, appointment of second Pleader Commissioner was only for delivering the possession and, therefore, any report prepared by the second Survey Knowing Pleader Commissioner which is in contravention to the first report of the Pleader Commissioner could not be sustained as *res judicata* would come into play and the second report is barred by constructive *res judicata*, if the second report tried to change the earlier report of first Pleader Commissioner. The learned counsel reiterated that the land in question was in share of Krishna Dutta and, therefore, Krishna Dutta was well within his rights to alienate the property in favour of the petitioner.

12. To buttress the claim of the petitioner for her impleadment, learned counsel relied on the decisions of the Hon'ble Supreme Court in the case of *Dhanlakshmi and Ors.*



vs. P. Mohan and Ors. reported in **(2007) 10 SCC 719** wherein the Hon'ble Supreme Court held that the appellants having purchased the undivided share of respondent nos. 2, 3, 4 & 6, the co-owners, are entitled to come on record in order to work out the equity in their favour in the final decree proceedings and the appellants were held to be necessary and proper parties to the suit.

13. The learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of ***Smt. Saila Bala Dassi vs. Smt. Nirmala Sundari Dassi and another*** reported in ***AIR 1958 SC 394= 1958 SCC OnLine SC 140*** wherein the purchaser, who sought to intervene in a proceeding arising out of execution of a mortgage decree, was permitted to be brought on record as additional appellant.

14. The learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of ***Khemchand Shankar Choudhary and another vs. Vishnu Hari Patil and others*** reported in **(1983) 1 SCC 18** wherein it has been held that a *transferee pendente lite* of an interest in an immovable property which is the subject matter of a suit is a representative in interest of the party from whom he has acquired that interest. The transferee has a right to be impleaded as a party to the



proceedings and to be heard before any order is made by virtue of Rule 10 of Order 22, CPC. It has also been held that a transferee from a party of a property which is the subject matter of partition can exercise all the rights of the transferor.

15. The learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of ***Amit Kumar Shaw and another vs. Farida Khatoon and another*** reported in ***AIR 2005 SC 2209*** wherein the Hon'ble Supreme Court while dealing with the applicability of doctrine of *lis pendens*, held that a *transferee pendente lite* of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest and he is entitled to be impleaded in the suit or other proceedings where the *transferee pendente lite* is made a party to the litigation, he is entitled to be heard in the matter on the merits of the case.

16. The learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of ***Dhurandhar Prasad Singh vs. Jai Prakash University and others*** reported in ***(2001) 6 SCC 534*** wherein it has been held that if devolution of any interest occurs during pendency of a suit, seeking leave of court to continue the suit was held not obligatory. Rule 10 of Order 22 is based on principle that trial of a suit cannot be



brought to an end merely because the interest of a party in the subject matter of the suit has devolved upon some other person or entity. It has further been held that even if no step is taken to seek leave of the court to continue the suit, the suit may be continued by or against the original party and the successor-in-interest will be bound by and will get the benefit of the decree. It has further been held that leave to continue suit after devolution of any interest during pendency of a suit can be sought not only by person on whom interest has devolved but also by plaintiff or any other party or person interested. Thus, the learned counsel submitted that the petitioner being a vendee from the co-owner is undoubtedly a successor-in-interest as his vendor has died and heirs/legal representatives of the vendor are not taking any interest in prosecuting the Misc. Case No. 227/1996.

17. The learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of *Savitri Devi vs. District Judge, Gorakhpur and others* reported in *AIR 1999 SC 976* wherein the Hon'ble Supreme Court allowed the impleadment of persons, who purchased the property despite the order of injunction and the transferees were held to be necessary and proper party.



18. Lastly the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *Sharadamma vs. Mohammed Pyrejan (dead) through Legal Representatives and another* reported in *(2016) 1 SCC 730* wherein the Hon'ble Supreme Court held that there cannot be dismissal of the suit or appeal, as the case may be, on account of failure of assignee to file an application to continue the proceedings.

19. Thus, learned counsel for the petitioner submitted that the impugned order needs interference by this Court and the same be set aside and the application of the petitioner be allowed.

20. The contention of the learned counsel for the petitioner has been vehemently opposed by the learned counsel appearing on behalf of the respective respondents. The learned counsel submitted that the present civil miscellaneous petition filed by the petitioner is not entertainable on facts as well as on law and the same is liable to be dismissed. The impugned order dated 12.12.2022 is a well considered and well discussed order and needs no interference.

21. At the outset, learned counsel for the respondent nos. 2, 5 to 7, 9, 10, 13 and 14 submitted that the petitioner purchased the property which was never in share of Krishna



Dutta as it is residential property of the respondents. The Survey Knowing Pleader Commissioner, who was appointed for giving delivery of possession and house as per award and modified decree of the Hon'ble Supreme Court, submitted his report on various dates including 03.03.2001 and on perusal of the said report, it is clear that eastern portion of Plot Nos. 3204, 3205, 3206 and 3207 were allotted to Bhagwat Prasad, who was given delivery of possession on 31.12.2000 and western portion of the aforesaid plots have been given to Krishna Dutta. In these circumstances, the intervener/petitioner has no right to claim impleadment in the proceeding.

22. The learned counsel for the respondents further submitted that some properties allotted in award in the share of Bhagwat Prasad had been sold by Krishna Dutta during the pendency of the litigation and even after delivery of possession. Krishna Dutta set up a number of persons in order to frustrate the award. One such instance was setting up one Sri Paswan and his son by filing a petition for making them parties to miscellaneous case and to decide their claim over Plot No.529, but the same was dismissed by the learned District Judge on 27.11.1998. Krishna Dutta filed another petition in the present Misc. Case No. 227/1996 through his second wife, namely



Urmila Devi, on 11.04.1997 regarding Plot Nos.3204, 3205, 3206 and 3207 with claim that these plots belong to her and again the said petition was dismissed vide order dated 03.04.1999. Thereafter, Krishna Dutta filed a petition on 08.01.2001 with objection to carving out separate takhta on Plot Nos.3204, 3205, 3206 and 3207. Another petition was filed on 14.03.2001 making allegation against Survey Knowing Pleader Commissioner with regard to Plot Nos. 3204 to 3207. Bhagwat Prasad filed rejoinder to both the applications and both the applications were heard and disposed of on 08.08.2003 with direction to the Advocate Commissioner to submit a clear report at once and without further delay.

23. The learned counsel for the respondents further submitted that after failing in several attempts to claim exclusive possession of household Plot Nos. 3204 to 3207, Krishna Dutta mischievously and dishonestly sold the property to the petitioner in the year 2008 and the intervener/petitioner knowingly purchased the property and she has, thus, purchased the litigation.

24. The learned counsel for the respondents further submitted that it is settled principle of law that if the vendor has no right, title, interest and possession of the land and house then



vendee has also no right, title, interest and possession of such property. The learned counsel further submitted that as per direction of the Hon'ble Supreme Court, the Survey Knowing Pleader Commissioner has already effected delivery of possession of all immovable properties including Plot Nos. 3204 to 3207. So far as third party interest is concerned, it is clear from the order of the Hon'ble Supreme Court that the learned District Judge has nothing to do even in case of any third party claim unless parties to this proceeding so desire. In these circumstances, learned subordinate court has no jurisdiction to entertain any application or claim of any third party interest. Therefore, the impugned order passed by the learned Additional District Judge, XIV, Patna is legal, valid and as per stipulation of the Hon'ble Supreme Court.

25. The learned counsel for the respondents further submitted that Bhagwat Prasad was given delivery of possession in terms of report of Survey Knowing Pleader Commissioner dated 03.03.2001 and his name was mutated in the State record vide order dated 09.11.2005 and he started depositing the rent to the Government of Bihar since 2006-07 till 2017-18. Therefore, the claim of the petitioner that after purchase of the land, she has come in possession of the property in question is false and



baseless. The learned counsel next submits that the heirs of the deceased brothers have come on record in Misc. Case No. 227/1996, but the learned subordinate court has no jurisdiction to add party in the proceeding of delivery of possession because it has to comply the orders of the Hon'ble Supreme Court in terms of the award and modified decree. The learned counsel further submitted that delivery of possession to the parties has already taken place and Misc. Case No. 227/1996 is pending only for acceptance of the reports submitted by the Pleader Commissioner. The objection of the opposite party was already rejected on 05.03.2016. So there is no scope of any third party to be impleaded in the present proceeding or to challenge the same.

26. The learned counsel referred to the decision of this Court in the case of *Dera Sahi Samadan Patiala vs. The State of Bihar and anr. (Civil Misc. No.343 of 2023)* wherein this Court did not allow the impleadment of a third party entity in execution proceeding who claimed to represent the interest of the decree-holder.

27. Thus, learned counsel submitted that the impugned order dated 12.12.2022 is in consonance with law and there is no requirement of interference in the impugned order



and the same be affirmed.

28. I have given my thoughtful consideration to the rival submission of the parties and also perused the records.

29. 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.”

30. The aforesaid provision confers discretion upon the court to make any person a party at any stage of the proceeding of a suit, but this discretion is to be exercised judiciously and can never be arbitrary or whimsical.

31. 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 discussed the law relating to impleadment of the parties. It will be relevant to quote paragraphs 13, 14, 15, 22, 25 & 27 of the



said judgment:-

“13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“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.”

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application,



and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. 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. 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. 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. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.



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.

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.

27. On a careful examination of the facts of this case, we find that the appellant is neither a necessary party nor a proper party. As noticed above, the appellant is neither a purchaser nor



the lessee of the suit property and has no right, title or interest therein. The first respondent-plaintiff in the suit has not sought any relief against the appellant. The presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the first respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title in the property in dispute”.

32. The learned trial court has declined to entertain the prayer of the petitioner on the grounds that the delivery of possession has already taken place and further delivery to the petitioner could not be given. The learned trial court further observed that any transfer of land which are subject matter of suit by any party shall be declared void as per terms of award/decreed, which attained finality vide the order of the Hon'ble Supreme Court dated 10.10.1996 passed in Civil Appeal No. 7475/1994. On these two grounds, the learned trial court dismissed the petition of the petitioner seeking impleadment in the miscellaneous case. Now, the claim of the



petitioner is only on the ground that the land she purchased was part of Schedule II property, which was allotted to Krishna Dutta and it was not a house which was to be divided in terms of modified decree dated 10.10.1996 passed in Civil Appeal No. 7475/1994. However, this claim of the petitioner does not appear to be sustainable in the light of report of learned Survey Knowing Pleader Commissioner. The documents relied on by the learned Survey Knowing Pleader Commissioner Mr. Shivanand Singh showed that Plot Nos. 3205 to 3207 contained houses. If this finding of fact is there, there is no occasion for this Court to take a contrary view. The submission of the petitioner that the report of earlier Pleader Commissioner was not taken into consideration or that there has been objection to the report of subsequent Pleader Commissioner are not of much significance. If delivery of possession had already taken place and the same was not challenged, any claim that objection to the report of Survey Knowing Pleader Commissioner is still pending would be without any merit. In any case, if such objection is pending, the person, who has filed the objection, can raise the matter before the court concerned and the court could dispose of such petition by passing an order. The petitioner cannot take advantage of this fact. However, from



perusal of report, it is evident that a petition filed by Krishna Dutta dated 10.11.2003 challenging the report of Advocate Commissioner Shivanand Singh has been rejected by the court of learned Additional District Judge-III, Patna vide order dated 05.03.2016, though on the ground that it was neither signed nor supported with the affidavit. If the property purchased by the petitioner was not in share of Krishna Dutta and was partitioned in ratio of 50:50 in terms of the orders of the Hon'ble Supreme Court dated 10.10.1996 passed in Civil Appeal No. 7475/1994, being a third party, such transfer *lis pendens* is void and confers no right upon the petitioner. It is also to be taken note of petition of some other persons to be made party on the ground that they were purchasers from Krishna Dutta was rejected by the learned trial court vide order dated 03.12.2003 and their objections were disposed of.

33. Further, the mandate of the modified decree is also not to be lost sight of. From the tone and tenor of the order dated 10.10.1996 passed in Civil Appeal No. 7475/1994, it is apparent that rights of only those third parties were protected which was created prior to passing of the modified decree and subsequent transfer did not confer any right to any third party and if a third party is aggrieved, such party can take action



against their vendor, if so advised. For this reason, the plaintiff has been agitating a right which she never has, to begin with. Thereafter, after effecting delivery of possession with regard to Khesra Nos. 3205 to 3207 in terms of the report of the Pleader Commissioner dated 17.09.2003, so there remained nothing in the matter for the petitioner to agitate and support her claim.

34. Therefore, the fact becomes apparent that the petitioner has not even a semblance of right to intervene in the subject matter which arises out of an execution proceeding and her claim for impleadment would fail for being without any substance. In the execution proceedings, the petitioner is merely an interloper and being a busybody, she could not seek impleadment in Misc. Case No.227/1996. Further, as the miscellaneous case has been instituted to execute the award, there is no scope for a third party to seek impleadment in such proceeding and reference could also be made to the decision of this Court in the case of *Dera Sahi Samadan* (supra). If the petitioner claims right, title and possession over the suit property, she can have recourse of law in appropriate proceeding but not in the instant miscellaneous case.

35. In the light of these facts and circumstances as discussed hereinabove, I am of the considered opinion that the



petitioner has failed to make out a case in her favour for impleadment in Misc. Case No. 227/1996 arising out of Execution case No. 08/1987. For this reason, the authorities cited by the petitioners are of no help as the facts and circumstances of the present case are quite different from the facts of the cases cited by the learned counsel for the petitioner.

36. Therefore, I do not find any jurisdictional error in the order dated 12.12.2022 passed in Misc. Case No. 227/1996 by learned Additional District Judge-XIV, Patna and the same is affirmed.

37. According, the present petition stands dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	11.02.2025
Uploading Date	07.05.2025
Transmission Date	NA

