

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.793 of 2018**

Kishan Kumar Bhagat @ Kishan Kumar Son of Shiv Nath Bhagat Resident of
Village P.O.P.S. Bihta, District- Patna.

... .. Petitioner/s

Versus

1. Ram Dayal Prasad
2. Anil Prasad
Both Sons of late Sher Bahadur Mahto Resident of Mohalla- Mahabir Nagar,
Bihta Samsthu Asthan, P.O. P.S. Bihta, District- Patna.
3. Satish Kumar Son of Kailash Prasad Resident of Village- Dumri, P.S. Bihta,
District- Patna.
4. Sunil Kumar @ Sunil Nonia Son of late Sher Bahadur Mahto Resident of
Mohalla- Mahabir Nagar, Bihar Samsthu Asthan, P.O.P.S.- Bihta, District-
Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Siddharth Harsh
Mr. Shivanand Singh
Mr. Shadwal Harsh
For the Respondent/s : Mr.Shailendra Kumar

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER**

7 20-12-2022 The petitioner is aggrieved by the order, dated
11.04.2018, passed in Title Suit No. 28 of 2010, by which the
learned Sub Judge-III, Danapur, has rejected the petition filed
by the petitioner under Order I Rule 10 (2) of the Code of Civil
Procedure for his impleadment in the suit as defendant.

The case of the petitioner is that the original plaintiff
of the suit, namely, Sona Devi, sold a piece of land to one Satish
Kumar, bearing plot no. 1089, khata no. 288, having an area of
08 decimals on 09.11.2009. The purchaser, Satish Kumar, in
turn, sold the said piece of land in favour of the petitioner on



15.01.2010, by virtue of a registered sale deed. Sona Devi filed the aforesaid suit on 06.02.2010 for a declaration that the sale deed is null, void and inoperative and is not binding upon the plaintiff.

Learned Counsel for the petitioner submits that during the pendency of the suit, the original plaintiff, Sona Devi, died and she was substituted by her three sons, out of which two sons have joined as plaintiffs and the third son has been made defendant on the basis of the fact that he has executed a rectification deed in favour of Satish Kumar, rectifying the plot no. 1089 into plot nos. 1087 and 1088. On the basis of the purchase made by the petitioner prior to the filing of the suit, the petitioner filed a petition on 10.08.2017, under Order I Rule 10 (2) of the Code of Civil Procedure for his impleadment in the suit as the defendant. Another petition was filed by the plaintiffs on 03.01.2018, under Order I Rule 10 (2) of the Code of Civil Procedure, for impleadment of the petitioner and other purchasers of the suit land, which is still pending. However, on the petition filed by the petitioner for his impleadment, the hearing took place and the prayer of the petitioner has been rejected by the impugned order.

Learned Counsel for the petitioner further submits



that the plaintiffs themselves wanted to add the petitioner as defendant in the suit. The plaintiffs being the *dominus litis* in the suit cannot turn around and oppose the petition filed by the petitioner for his impleadment as defendant in the suit on the basis of the purchase made by him from the original defendant Satish Kumar.

Learned Counsel, therefore, submits that the legal interest in the suit property has devolved upon him, as such, in view of the provisions under Order XXII Rule 10 read with Order I Rule 10 (2) of the Code of Civil Procedure, the presence of the petitioner is necessary in order to enable the Court to effectively and completely adjudicate and settle all questions involved in the suit.

On the other hand, leaned Counsel for the respondents 1 and 2-plaintiffs submits that only one son of the original plaintiff has executed rectification deed and other two sons of the original plaintiff have not joined in the rectification deed. There is no provision under the Registration Act for rectification of sale deed by the Registrar and the rectification can only be done under Section 26 of the Specific Relief Act.

I have heard learned Counsel for the parties and have gone through the materials available on record, including the



impugned order.

It appears that the petitioner is the purchaser of the suit land described in the plaint as plot no. 1089, which has subsequently been rectified at the instance of one of the sons of the vendor, Sona Devi, into two plots, i.e. plot nos. 1087 and 1088. It is also evident that the defendant of the suit, Satish Kumar, prior to the filing of the suit had sold the property in favour of the petitioner, but the petitioner was not impleaded as defendant in the suit at the time of its filing; whereas, the legal interest of the petitioner had already been created after the purchase made by him from the defendant Satish Kumar.

Order XXII Rule 10 of the Code of Civil Procedure stipulates that upon assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

Admittedly, the interest in the suit property, i.e. plot no. 1089, has been devolved in favour of the petitioner by way of purchase made by him on 15.01.2010.

In view of the aforesaid facts and the legal position and for the reasons stated herein above, the order, dated 11.04.2018, passed, in Title Suit No. 28 of 2010, by learned Sub



Judge-III, Danapur, is hereby set aside and the petitioner is directed to be impleaded as defendant in the suit.

This application is, accordingly, allowed.

(Anil Kumar Sinha, J.)

AFR/-
Prabhakar Anand/-

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