

Om Satyam Trivedi Vs Abubakar Khan @ Lakhi Khan

Court: Patna High Court

Date of Decision: April 13, 2023

Acts Referred: Constitution Of India, 1950 " Article 227
Code of Civil Procedure, 1908 " Order 1 Rule 10, Order 1 Rule 10(2)

Hon'ble Judges: Sunil Dutta Mishra, J

Bench: Single Bench

Advocate: Jitendra Kishore Verma, Shreyash Goyal, Prashant Vedasen, Abhay Nath, Pawan Kumar, Satya Narayan Singh, S.K. Dwivedi

Final Decision: Allowed

Judgement

1. Heard learned counsel for the parties.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India against the order dated 22.08.2022 passed by

learned Munsif, Sherghati, Gaya in Title Suit No. 242 of 2019, whereby petition filed by the petitioner under Order 1 Rule 10 (2) C.P.C. for adding

them as parties in the suit has been dismissed.

3. The plaintiff / respondent No. 1 has filed title suit bearing Title Suit No. 242 of 2019 against the State of Bihar for declaration of right, title and

interest of the plaintiff over the suit land and further declaration that the R.S. Khatiyan with respect to the suit land is erroneous document.

4. The case of the plaintiff is that he purchased the suit land vide registered sale deed No. 6487 dated 23.11.2010 and is in possession of the same.

However, when the plaintiff went to Anchal Office, Imamganj for mutation of purchased suit land he came to know that new khata has been opened

in the name of the defendant / State of Bihar. The further case of the plaintiff is that in cadestral survey the suit land stand recorded as Gairmazarua

Malikan possessed by the Malikan in the name of Durga Baidya who was the ancestor of the vendor of the suit land.

5. The petitioners / intervenors filed a petition under Order 1 Rule 10 (2) of C.P.C. stating that the suit land was a ditch and water accumulates there

for irrigation and it is being used for the public in general and petitioners in particular. The suit land in the revisional survey records of right recorded as

Anabad Bihar Sarkar. During the revisional survey the suit land was wrongly and intentionally recorded in the name of Jaimangal Baidya and Ambuj

Baidya, (vendor of the suit property to petitioners). The petitioners as well as some other persons filed revision before the Joint Director,

Consolidation, Magadh Division under Section 35 of the Consolidation Act and the same was decided in favour of the State of Bihar. Against the

order of Joint Director, Consolidation, Jai Mangal Sah and plaintiffs filed Civil Writ before the Hon'ble High Court, Patna and the same was

dismissed on 09.02.2016 with liberty to approach Bihar Land Tribunal for appropriate relief and thereafter Jai Mangal Baidya and the plaintiffs filed a

case in Bihar Land Tribunal and the same was decided and declared that the suit land is Gairmazarua Aam Malikan Parti. The plaintiffs want to grab

the suit land on the basis of sale deed which is illegal and void which was opposed by the petitioners. The learned Court below dismissed the said

petition for their impleadment in suit vide impugned order dated 22.08.2022 holding that the petitioner has not shown as to how he is necessary party to

the suit.

6. Learned counsel for the petitioners submits that the plaintiff and his vendor did not move any Court against the order passed by the Bihar Land

Tribunal by which it was held that the land in dispute is ditch and the water is used for irrigation purpose and the Joint Director has rightly held the land

to be recorded as Anabad Bihar Sarkar. Learned counsel for the petitioners further submits that plot of land was never described as kasht and it was

not used for the purpose of agriculture and the ex-zamindar had not filed any zamindari return in his name at the time of abolition of zamindari and the

land in question became land of State and in the recent survey the nature of land was described as Anabad Bihar Sarkar and during the consolidation

proceeding when wrong entries were made in name of Jai Mangal Baidya and Ambuj Baidya then petitioners alongwith other persons of village who

had been using the rain water for the purpose of irrigation from above plot of land, filed a revision petition under Section 35 of the Consolidation Act

before the Court of Director Consolidation, Magadh Division, Gaya and during the pendency of the said revision petition before Consolidation Court,

the said Jaimangal Baidya and Ambuj Baidya executed sale deed in respect of the land in question to the plaintiff.

7. After hearing both the sides the learned Joint Director, Consolidation, Gaya by his order dated 27.12.2010 allowed the revision petition and passed

order to record the land in question in the khata of Anabad Bihar Sarkar after cancelling the name of said Jaimangal Baidya and another. The said

finding was challenged in the Hon'ble Court in CWJC No. 738 of 2011 in which the petitioners were also made parties which was ultimately

dismissed with liberty to the petitioners to approach the Bihar Land Tribunal, Patna.

8. Learned counsel for the petitioners submits that the plaintiff deliberately filed the present suit making the State of Bihar through Collector Gaya and

Anchal Adhikari, Imamganj, Gaya as defendants in the suit without making the petitioners as defendants and concealed the actual fact before the

Court.

9. Learned counsel for the petitioners submits that when the petitioners had been contesting the question in issue right from the Court of Joint Director

Consolidation, Hon'ble Patna High Court and learned Bihar Land Tribunal and was contesting parties therein, the plaintiff has deliberately avoided

to add petitioners as defendants in his Title Suit. The petitioners are necessary and proper parties in the suit in the facts and circumstances and they

deserve to be added as defendants in the suit.

10. Learned counsel for the State of Bihar submits that although the State of Bihar is protecting its stand by filing written statement and contesting the

Title Suit, however, he has no objection if the petitioners may be made party in the suit for proper and effective adjudication of the case.

11. Learned counsel for the respondents on the other hand submits that the petitioners are neither the necessary parties nor proper parties for proper

and effective adjudication of the suit as no relief has been claimed against the petitioners.

12. The provisions of Order 1 Rule 10(2) of the Code are very wide and the powers of the Court are equally extensive. Even without an application to

be impleaded as a party, the Court may, at any stage of the proceedings order that the name of any party, 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.

13. It is well settled that the underlying principle regarding the addition of parties is that there must be finality to litigation and to secure that purpose, it

would be incumbent upon the Court to add a party whose presence would be necessary to put an end to all the controversy in the litigation finally,

“questions involved in the suit” referred to in Order 1 Rule 10 means not only the questions involved in the suit originally framed between the

parties to the suit but also any dispute between the parties of the suit and a third party, and that the object of the provision is that where several

disputes arise out of on subject matter all the parties interested in such disputes should be brought before the Court and all questions in contest

between them should be completely settled in the action.

14. The Hon'ble Supreme Court in Razia Begum Vs. Sahebzadi Anwar Begum and Ors (AIR 1958 SC 886) had observed:

“There cannot be the least doubt that it is firmly established as a result of judicial decisions that a person may be added as a party to a suit he

should have a direct interest in the subject matter of the litigation whether it raised questions relating to movable or immovable property.”

15. The Hon’ble Supreme Court in judgment dated 27.09.2022 in *Moreshtar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi* (Civil Appeal No.

5755-5756 of 2011) reiterated that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some

relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the

absence of such a party. The Hon’ble Supreme Court quoted the observation made by Hon’ble Supreme Court in case of *Mumbai*

International Airport private Limited Vs. Regency Convention Center and Hotels private Limited and Ors. (2010) 7 SCC 417 that 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. It has

been held that 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 proper or necessary

party, the Court has no jurisdiction to implead him, against the wishes of the plaintiff.

16. There can be no doubt about the proposition that plaintiff is the dominus litis of his own suit. The theory of dominus litis cannot be overstretched in

the matter of impleading parties, which results in ineffective decrees passed in absence of necessary parties or where it is misused to obtain decree

against non-interested persons / officials and then use it to assert rights of plaintiff. It is also for the Court to ensure that the real matter in dispute is

effectively decided by impleading all those who are necessary parties. Merely because plaintiff does not choose to implead a person is not sufficient

for rejection of an application for being impleaded.

17. In the peculiar fact of the case in which Bihar Land Tribunal on the petition of plaintiff and his vendor held that the land in dispute is ditch and the

water is used for irrigation and upheld the decision of Joint Director, Consolidation that land to be recorded as Anabad Bihar Sarkar. The petitioner

was party in the petition before Bihar Land Tribunal and the plaintiff himself made them the party also in the writ petition against the order of Joint

Director, Consolidation, before this Court as stated above. The plaintiff after getting no relief on contest from Bihar Land Tribunal, he filed the suit

without making the petitioners as party defendant and concealed the material fact before the Court.

18. It is clear that petitioners being the proper party whose presence enables the Court to completely, effectively and adequately adjudicate upon

matters in dispute in the suit. In my opinion, the same constitute sufficient ground and interest to entitle them to be implead as party defendants.

19. For all these reasons, I set aside the impugned order of the trial Court and direct that petitioners be impleaded as party defendants.

20. This Civil Miscellaneous Application is, accordingly, allowed.