
(2023) 04 PAT CK 0031

Patna High Court

Case No: Civil Miscellaneous Jurisdiction No. 760 Of 2018

Shobhan Mandal

APPELLANT

Vs

State Of Bihar

RESPONDENT

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: Sanjay Kumar Sharma, Kameshwar Prasad Singh, Satish Chandra Jha -3,
Jitendra Kumar Pandey, Dhurjati Kumar Prasad

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 17.01.2018 passed by

learned Munsif, Araria in Title Suit No. 332 of 1998 whereby and whereunder the petition filed by the petitioners under Order " 1 Rule 10 of the

Civil Procedure Code for their impleadment as party-defendants was rejected.

3. The plaintiffs (private respondents No. 4 to 8 herein) have filed a title suit bearing Title Suit No. 332 of 1998 claiming title of the suit property on the

basis of adverse possession in which defendants State of Bihar represented through the District Collector, Araria filed written statement and contested

the suit to the effect that the said suit land does not belong to the plaintiffs.

4. Petitioners claimed that they are necessary and proper parties being in possession of the suit property from last more than 30 years and cultivating the same, when they came to know about the suit, filed the impleadment petition dated 20.02.2017 under Order 1 Rule 10 of the Code of Civil

Procedure and sought for their impleadment as defendants stating that the land in question was a "pond" during the Revenue Survey operation

but in due course of time the same was filled up with soil and the nature of land substantially changed and it became cultivable land and they are

cultivating the same to maintain their family and in due course they applied the competent authority for settlement of the land who initiated the process

of settlement of the land in question in favour of them but due to this suit filed by the plaintiff the S.D.O. Araria kept the matter in abeyance.

5. The learned trial Court rejected the petition for impleadment holding that the interest of petitioners are as interest of the State of Bihar and the State

of Bihar is contesting party in this suit, hence, the intervenor petitioners are not proper and necessary party for the proper disposal of the suit.

6. Learned counsel for the petitioners has submitted that the learned trial Court failed to appreciate that these petitioners being in exclusive, peaceful

and vacant possession of the suit property and are cultivating the same from last many years and if the plaint of the plaintiffs being allowed and

decreed, then the interest of petitioner are likely to be affected and prejudiced and therefore the learned trial Court erred in rejecting the petition for

impleadment filed by the petitioners. It is further submitted that allowing the impleadment application would not cause prejudice to the interest of the

plaintiffs who have instituted the suit based on no evidence at all and they have claimed government property to be their own property.

7. The petitioners who are in possession of the suit land are necessary party having substantive material and evidence to contest the suit and

supplement the stand of State of Bihar who also contesting the suit of the plaintiffs.

8. Learned counsel for the plaintiffs /respondent Nos. 4 to 8 / private respondents submits that the learned trial Court has rightly observed that the

petitioners (intervenor-petitioners) are not proper and necessary parties to the suit for the purpose of disposal and rejected the petition for impleadment

by the impugned order and is not a fit case for interference by this Court. He has further submitted that the petitioners have claimed their rights against the State of Bihar who is contesting this suit and have liberty to file separate suit as no relief has been claimed against the petitioners in the suit. Further, he has submitted that under principles of dominus litis the plaintiffs have right to make party only to those against whom they have claimed relief.

9. Learned counsel for the State has submitted that the State is contesting the suit, however, to avoid multiplicity of the claims by the parties on the suit land he has no objection if the petitioners who are claiming their possession on the suit land may be made party as defendants in the suit for proper adjudication in the suit.

10. 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.

11. 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.

12. The Hon^{ble} Supreme Court in the judgment reported 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.

13. The Hon^{ble} Supreme Court in judgment dated 27.09.2022 in Moreshar 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.

14. The Hon^{ble} Supreme Court in the aforesaid judgment 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.

15. 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.

16. There is also one another aspect that should be borne in mind. The plaintiffs claim the suit land on the basis of adverse possession and the intervenor-petitioners also claims the suit land on the basis of their possession. Accordingly, the suit should not be decided in the absence of a person whose interests are vitally affected by the adjudication. In my opinion that constitute sufficient ground and interest to entitle him to be impleaded as party.

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

18. The trial Court is directed to expedite the disposal of the suit without unnecessary delay and if the parties desires to file additional pleadings consequent upon the impleading of the petitioners as a party defendants, the same should be done within the minimum time.

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