

(2023) 09 PAT CK 0010

Patna High Court

Case No: Civil Miscellaneous Jurisdiction No. 1303 Of 2018

Giridhar Gopal

APPELLANT

Vs

Ramawati Devi

RESPONDENT

Date of Decision: Sept. 5, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Code of Civil Procedure, 1908 - Section 151, Order 1 Rule 10, Order 1 Rule 10(2)

Hon'ble Judges: Sunil Dutta Mishra, J

Bench: Single Bench

Advocate: Pushkar Narain Shahi, Apurva Kumar, Shivam, Deep Shekhar, B.N. Chowdhary, Dhananjay Kumar, Amir Alam

Final Decision: Dismissed

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 24.03.2018 passed in Title Suit No. 144 of 2011 by learned Sub Judge II, Danapur whereby the learned Court below allowed the application under Order 1 Rule 10 (2) and Section 151 of the Code of Civil Procedure (in short "C.P.C.") and directed that the applicant Smt. Ramawati Devi (respondent No.1) be added as a party-defendant in the suit.

3. The brief facts of the case are that the plaintiff filed a suit being Title Suit No. 144 of 2011 for declaration that suit land described in Schedule-I of the plaint was joint family property of the plaintiff and defendant Nos. 2 to 10 and defendant Nos. 2 to 4 did not have a right to sell the same and the land sold by defendant Nos. 2 to 4 in favour of defendant No. 1 by a registered deed of sale dated 16.03.2011 having no effect and the same may be set aside. The defendants (except defendant Nos. 2 to 4) filed their written statement. The issues were framed and three witnesses on behalf of the plaintiff were examined. The petition dated 09.08.2017 filed on behalf of Smt. Ramawati Devi under Order 1 Rule 10 (2) and Section 151 of the C.P.C. with prayer to add her as defendant in the suit as she is necessary party stating that the suit property is the ancestral property of the father of the intervenor-petitioner namely Sudarshan Singh and after his death she is legal heir of her father's property because he has no male issue and the plaintiff also conceded in his cross-examination that Sudarshan Singh has two daughters but he has not made party to them in the suit. The said impleadment petition was objected by the plaintiffs on the ground that the suit is mainly for declaration that alleged deed of sale dated 16.03.2011 executed by defendant Nos. 2 to 4 in favour of defendant No. 1 is void-ab-initio, fraudulent, forged,

fabricated and purchaser defendant No. 1 did not acquire any right and title over the property and accordingly intervenor-petitioner is not a proper and necessary party in the suit. However, the said impleadment petition has been allowed by the impugned order dated 24.03.2018.

4. Learned senior counsel for the petitioner has submitted that respondent No. 1, Smt. Ramawati Devi is not a necessary party as in no manner it can be said that her presence is necessary as party-defendant in the suit to decide any issues or for passing a judgment or any of the reliefs prayed for by the plaintiff. He has further submitted that Smt. Basmati Devi alongwith her daughter Smt. Bina Devi and then minor daughter Smt. Ramawati Devi had filed Title Partition Suit No. 38 of 1969 for partition in respect of their one-third share which was dismissed for default vide order dated 28.01.1977. He next submits that the suit is not the suit for partition but is for declaration of sale deed as void-ab-initio and the intervenor is not affected by the decision in the suit as she has no interest in the suit land and the law is well settled that if the intervenor is not a necessary or proper party, the plaintiff being dominus litis, the impleadment petition is liable to be dismissed.

5. Per contra, learned counsel for the respondent No. 1 has submitted that plaintiff is claiming the suit property as joint family property and the petitioner being legal heir of co-sharer of the joint hindu property, is necessary and proper party and the learned trial Court has rightly allowed the impleadment petition of defendant No. 1 by the reasoned order which does not require any interference by this Court in its supervisory jurisdiction.

6. Law is well settled that the provision of Order 1 Rule 10 (2) of the C.P.C. are very wide and powers of the Court are equally extensive. Even without an applicant to be impleaded as a party, the Court may, at any stage of the proceedings order that the name of any party, 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.

7. The underlying principles regarding the addition of parties is that there must be finality to the 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 controversy in the litigation finally, "question involved in the suit" referred to in Order 1 Rule 10 CPC 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 the such disputes should be brought before the court and all questions in contest between them should be completely settled in the action.

8. In Rameshchand Kundanmal Vs. Municipal Corporation of Greater Bombay (1992) 2 SCC 524 the Apex Court held in paragraph 14 as under:

"It cannot be said that the main object of the rule is to prevent multiplicity of action though it may incidentally have that effect....It is, therefore, necessary that the person must be directly or legally interested in the action in the answer i.e. he can say that litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action."

9. In the Judgment of Hon'ble Supreme Court in Mumbai International Airport (P) Ltd. Vs. Regency Convention Centre and Hotels (P) Ltd. reported in (2010) 7 SCC 417 observed that the general rule in regard to impleadment of parties is that in a suit, being dominus litis, may choose the person 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) CPC which provides for impleadment of proper or necessary parties. It is further held that 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. The discretion under the sub-rule can be exercised suo motu or on 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 add anyone as a plaintiff or defendant if it finds that he is a necessary party or proper party.

10. Mere addition of the intervenor as a party will not create an interest in the suit property and in considered view of this Court the presence of the intervenor is necessary for efficacious adjudication of this case and addition is also necessary for avoidance of multiplicity of suit.

11. The Court can add anyone as a plaintiff or defendant if it finds that he is a necessary party or proper party for adjudicating upon the issue involved in the suit. Merely because plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded.

12. Having heard the learned counsel for the parties and perused the impugned order, it appears that the learned trial Court observed that plaintiff has conceded that Sudarshan Singh had two daughters and it is well settled principles of law that with respect to one subject-matter the determination of interest of all the parties shall be done in one suit and in view of the said facts and considering the submission of the parties, the impleadment petition of respondent No. 1 was allowed. The learned trial Court has exercised its jurisdiction considering the facts and circumstances of the case.

13. As discussed above, I do not find any illegality or jurisdictional error in the impugned order to interfere with by this Court in the supervisory jurisdiction under Article 227 of the Constitution of India.

14. This Miscellaneous application is, accordingly, dismissed.