

## **Yahu Ram @ Yadunath Pratap Deo and Others Vs Dr. Motichand Bishwanath Agrawal and Others**

**Court:** Jharkhand High Court

**Date of Decision:** April 20, 2011

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 1 Rule 10, 151

**Hon'ble Judges:** D.N. Patel, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

D.N. Patel, J.

The present writ petition has been preferred by the original Plaintiffs against the order passed by Munsif, Garhwa dated 3rd

September 2008 in Eviction Suit No. 1 of 2001, whereby an application dated 14th September, 2007 under Order I Rule 10 CPC filed by

present Respondent No. 1 as an intervenor has been allowed by the learned trial court.

2. Having heard learned Counsel for the parties and looking to the facts and circumstances of the case, I see no reason to entertain this writ

petition, mainly, for the following facts and reasons:

(i) Present Petitioners are the original Plaintiffs of Eviction Suit No. 1 of 2001. It appears that the present Respondent No. 1 had preferred an

application under Order I Rule 10 CPC to be read with Section 151 thereof for joining party as Defendant, mainly, on the ground that he is the

owner of the property in question by virtue of registered sale deed dated 31st May 1967.

(ii) It further appears from the application filed by the intervenor (Respondent No. 1) that he is vitally interested in the outcome of the suit filed by

the present Petitioners i.e. in Eviction Suit No. 1 of 2001.

(iii) With regard to semblance of any right, which an intervenor is having, it has been held by the Hon"ble Supreme Court in the case of Sumtibai

and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others, in paragraph-14,

which reads as under:

14. In view of the aforesaid decisions we are of the opinion that Kasturi case is clearly distinguishable. In our opinion it cannot be laid down as an

absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In

our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would

lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the

decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

In view of the aforesaid decision, Respondent No. 1 has rightly been joined as a party Defendant in Eviction Suit No. 1 of 2001 preferred by the

present Petitioners.

(iv) Moreover, present Respondent No. 1, who now joined as a party Defendant, has also preferred Title Suit No. 78 of 1983, in which the

present Petitioners are the Defendants, who have also joined as Defendants. Thus, it was within the knowledge of the present Petitioners that

earlier suit filed by the intervenor is pending and is vitally interesting in the suit property. It is submitted by the counsel for the Petitioners that the

said Title Suit No. 78 of 1983 was dismissed, against which second appeal is pending before this Court. Therefore, there is no need to join any

intervenor as a party Defendant. This contention has rightly been brushed aside by the trial court. It ought to have been kept in mind that whenever

any party has any right, title or interest in the suit property, he ought to have joined as a party Defendant, looking to the decision rendered by the

Hon"ble Supreme Court as reported in Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar

Chordia (Dead) and Others, .

3. In view of the aforesaid, there is no substance in this writ petition. Hence, this writ petition is dismissed.