

IN THE HIGH COURT OF JUDICATURE AT PATNA

Manni Bibi @ Mani Bibi

vs.

Mobina Khatoon & Ors.

CIVIL MISCELLANEOUS JURISDICTION No.1477 of 2018

13 July 2023

(Hon'ble Mr. Justice Sunil Dutta Mishra)

Issue for Consideration

Whether the petitioner, claiming to be a legal heir in possession of the suit land, is a necessary and proper party in the partition suit and should be impleaded as a defendant under Order I Rule 10(2) CPC?

Headnotes

Petitioner has claimed that the suit land was allotted to her mother and she is residing on the suit land after construction of the house and the said fact is corroborated by the stand of defendants in their written statement also which has been mentioned by the learned Court below. Whether the claim of the petitioner is correct or not, can be decided in trial and not at this stage. When the petitioner is a necessary party, the Court ought to have impleaded her as one of the parties-defendant. There would be no proper, effectual and complete adjudication of the disputes in the matter without the impleadment of the petitioner in the suit. (Para 18, 19)

Application is allowed. (Para 21)

Case Law Cited

Razia Begum v. Sahebzadi Anwar Begum (AIR 1958 SC 886); Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi (Civil Appeal No. 5755-5756 of 2011); Mumbai International Airport Pvt. Ltd. v. Regency Convention Center & Hotels Pvt. Ltd. (2010) 7 SCC 417

List of Acts

Code of Civil Procedure, 1908 (Order I Rule 10(2), Section 151); Constitution of India (Article 227)

List of Keywords

Impleadment; Necessary Party; Partition Suit; Order I Rule 10(2) CPC; Civil Miscellaneous; Article 227 Constitution; Property Possession; Ancestral Property; Effective Adjudication; Rejection of Petition

Case Arising From

Partition Suit No. 26/2018 / (4/2018), Sub-Judge-V, Aurangabad

Appearances for Parties

For the Petitioner: Mrs. Nivedita Nirvikar, Sr Advocate; Mr. Manish Dhati Singh, Ms. Richa, Advocate

For the Respondents: None

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1477 of 2018**

Manni Bibi @ Mani Bibi W/o Abid Hussain D/o Rasulan Bibi, Resident of
Mohalla-Nawadih, P.O. and P.S.-Aurangabad, District-Aurangabad.

... .. Petitioner/s

Versus

1. Mobina Khatoon Wife of late Anul Haque
2. Amal Praveen
3. Gajal Praveen
4. Muskan Praveen All Daughter of Late Anul Haque, All are Resident of
Mohalla-Mohalla-Nawadah, Ward No-22, Aurangabad, P.S.-Aurangabad T
District-Aurangabad Bihar
5. Abada Khatoon Wife of Late Jainul Haque
6. Gulam Mustaffa @ Sheru
7. Allaudin @ Teman
8. Arsad @ Baba All Sons of Late Jainul Haque
9. Shamsha Khatoon D/o Late Md. Kasim W/o Md. Yashin All are Resident of
Mohalla-Mohalla-Nawadah, Ward No-22, Aurangabad, P.S.-Aurangabad (T)
District-Aurangabad Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Nivedita Nirvikar, Sr Advocate Mr. Manish Dhati Singh, Advocate Ms. Richa, Advocate
For the Respondent/s	:	None

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT**

Date : 13-04-2023

Notice was issued to respondent Nos. 1 to 4, who are
plaintiffs in the suit. Despite valid service of notice and
sufficient opportunity given, no one appeared on behalf of the
said respondents / plaintiffs.

2. Heard learned senior counsel for the petitioner.

3. This Civil Miscellaneous application has been filed
under Article 227 of the Constitution of India against the order



dated 19.06.2018 passed by learned Sub Judge-V, Aurangabad in Partition Suit No. 26/2018 / (4/2018) whereby and whereunder petition filed by the petitioner under Order 1 Rule 10 (2) and Section 151 of C.P.C. seeking impleadment as defendant was rejected.

4. Plaintiffs / Respondent 1st set filed a partition suit bearing Partition Suit No. 26/2018 (4 / 2018) seeking relief to grant a preliminary decree with respect to 1/3rd share of plots of suit land and carved out separate takhta of the same to plaintiffs by appointing of survey knowing Pleader Commissioner and to declare right, title and interest of plaintiffs over the land given in Schedule-II of the plaint.

5. The case of the plaintiffs is that Abdul Nasib was Khatiyani Raiyat and ancestors of the plaintiffs and defendants. The genealogy attached with plaint to show the relationship between the parties. The defendants in written statement contended that plaintiffs and defendants are descendants of common ancestors, namely, Abdul Nasib who, in lieu of Dain Mehar, had executed a registered deed of Bai Mukasa on 05.01.1933 in favour of his wife Sahidan with respect to land of plot No. 1053 under Khata No. 132 Area 7 Decimal and Bibi Sahidan, the widow of Abdul Nasib died leaving behind two



sons and a daughter and after her death the sons and daughter of her came in possession of the property gifted to Bibi Sahidan and the house standing over the suit plot towards north portion is the house of Mani Bibi (the petitioner herein) and she is in possession.

6. The petitioner filed a petition on 05.06.2018 under Order 1 Rule 10 (2) and Section 151 C.P.C. seeking impleadment as intervenor-defendant in the said partition suit claiming that Schedule-II property belongs to the petitioner as the same was allotted to her mother Rasulan Bibi (daughter of Abdul Nasib) in amicable partition with her brothers. The petitioner further claimed that she has constructed residential house on the suit land (Schedule II land) and is residing therein.

7. In the rejoinder, the plaintiffs had stated that Abdul Nasib had no daughter and the petitioner is stranger and is not legal heir of late Abdul Nasib.

8. The petitioner had filed before the learned Court below a certificate issued by concerned Ward Commissioner certifying that petitioner is maternal grand-daughter of Sahidan Bibi and daughter of Rasulan Bibi and she is residing in the Nawadih ward, Aurangabad after construction of a house. The petitioner also filed payment receipt of property tax to



Aurangabad Nagar Parishad for the house situated over the suit land. However, the learned Court below rejected the said petition dated 05.06.2018 seeking impleadment as party defendant vide order dated 19.06.2018 against which the petitioner has filed this Civil Miscellaneous application.

9. Learned counsel for the petitioner has submitted that the house standing over the suit land is the house of petitioner and she is in possession. The plaintiffs have claimed the land which belongs to the petitioner, who is maternal grand daughter of the common ancestor Abdul Nasib. He has further submitted that the defendants in their written statement have also admitted the claim of the petitioner and the same has also been noted by the Court in its order dated 10.07.2018 that Abdul Nasib in lieu of Dain Mehar had executed a registered deed of Bai Mukasa on 05.01.1933 in favour of his wife Sahidan with respect to land of plot No. 1053 under Khata No. 132 area 7 decimal. Bibi Sahidan, the widow of Abdul Nasib died leaving behind two sons and daughter and after her death her sons and daughter came in the possession of the property gifted to Bibi Sahidan.

10. Learned counsel for the petitioner further submitted that the learned Court below has discussed the law on the point and observed that if the relation as asserted by the petitioner is



existing, she is necessary party but rejected the petition of the petitioner which is against the fact and law as well. The petitioner is the necessary party and is required to be impleaded as the party defendant.

11. A wide discretion has been conferred on the Court under the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure. Even without an application for being impleaded as a party, the Court may, at any stage of the proceedings order that the name of any party, who ought to have joined whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit, be added. The discretion to be exercised based on sound judicial principles of law taking into consideration of the facts of the case. In exercising judicial discretion under Order 1 Rule 10(2) CPC, the Court will of course act according to reason and fair play and not according to whims and caprice.

12. 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 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 such disputes should be brought before the Court and all questions in contest between them should be completely settled in the action.

13. The effectual and complete adjudication and settlement of all the questions involved in the suit is the primary test to decide as to whether the impleadment of any party to a suit is required or not.

14. The Hon’ble Supreme Court in **Razia Begum Vs. Sahebzadi Anwar Begum and Ors (AIR 1958 SC 886)** had observed that 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 **Moresnar 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.

16. The 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** has very widely discussed the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. It was observed 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.



17. The plaintiff is the *dominus litis* of his own suit. It is no more *res integra* that 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.

18. Having heard learned senior counsel for the petitioner and on perusal of the material on record, it appears that the petitioner has claimed that the suit land was allotted to her mother and she is residing on the suit land after construction of the house and the said fact is corroborated by the stand of defendants in their written statement also which has been mentioned by the learned Court below. Whether the claim of the petitioner is correct or not, can be decided in trial and not at this stage. When the petitioner is a necessary party, the Court ought to have impleaded her as one of the parties-defendant.

19. In the teeth of hostile claims set up by the parties, can



it be said that there would be proper, effectual and complete adjudication of the disputes in the matter without the impleadment of the petitioner in the suit. The answer in my view is no. With the presence of the petitioner the trial Court would decide the suit effectively and adequately adjudicate upon all the matters in dispute in the suit.

20. For the aforesaid reasons, I set aside the impugned order of the trial Court and direct that petitioner be impleaded as party defendant.

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

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	AFR
CAV DATE	20.02.2023
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Transmission Date	NA

