
(2011) 12 PAT CK 0020
In the Patna High Court
Case No : CWJC No. 9257 of 2011

Devendra Prasad Sah and Anr	Vs	APPELLANT
Lakshmi Sao @ Lakshmi Sah and Others		RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 22 Rule 4, 151
Constitution of India, 1950 — Article 227

Citation : (2012) 3 PLJR 277

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—I have heard the learned counsel, Mr. Pramod Manbansh on behalf of the petitioners and the learned counsel, Mr. Pramod Kumar Sinha on behalf of the respondents. The petitioners have filed this application under Article 227 of the Constitution of India against the order dated 16.12.2008 passed by Munsif-II, Begusarai in Title Suit No. 176 of 1985 whereby the learned Court below rejected the application filed by the petitioners under Order 1 Rule 10(2) read with Section 151 C.P.C. for being impleaded as defendants in the suit.

2. The learned counsel for the petitioners submitted that the defendant no. 6, Gulab Chand Sah was made party by the plaintiff. On the death of defendant no. 6 on 2.7.1996, the plaintiff filed application on 14.7.2004 to expunge his name but the learned Court below by order dated 29.8.2005 rejected the said petition holding that Gulab Chand Sah was proper and necessary party and, therefore, his name cannot be expunged. The petitioners are the sons of said Gulab Chand Sah. They filed the application for being impleaded as party but the learned Court below by the impugned order dated 16.12.2008 rejected the application wrongly. According to the learned counsel, since the father was found to be necessary party, the learned Court below has wrongly not impleaded the

petitioners in the suit.

3. On the other hand, the learned counsel for the plaintiffs-respondents submitted that Gulab Chand Sah, defendant no. 6 neither appeared nor contested the matter and no relief was claimed against him and, therefore, the plaintiff filed the application for deleting his name. Earlier the learned Court below wrongly rejected the prayer. Considering these facts, the learned Court below by the impugned order has rightly rejected the application of the petitioners.

4. From perusal of the impugned order, it appears that the learned Court below found that the plaintiff has not claimed any relief against the defendant no. 6. The defendant no. 6 never appeared in the suit nor he filed written statement nor contested the suit and, therefore, application of the petitioners has been rejected.

5. From perusal of the plaint which was produced before me at the time of hearing of this application, it appears that the only relief claimed in the plaint is against the defendant 1st party. According to the plaintiff, the defendant 1st party dispossessed the plaintiff from 11 dhurs and, therefore, prayed that a decree for recovery of possession with regard to 11 dhurs of land which is the subject matter of suit be passed in favour of the plaintiff and against defendant 1st party or whosoever be found in occupation thereof. Prayer for injunction has also been made. It is admitted that defendant no. 6 was defendant 2nd party. Only allegation made in the plaint is that the defendant 2nd parties are in collusion with the defendant 1st party. No relief has been claimed against defendant 2nd party. The father of the petitioners never appeared in the suit nor he filed any written statement nor contested the suit. The suit is of the year 1985. He died in 1996. It is well settled that plaintiff is the dominus litis and he cannot be compelled to fight his case against a person against whom he is not claiming any relief. In view of the above facts stated, it cannot be said that the suit cannot be decided effectively in absence of the present petitioners. The earlier order passed by the Court below whereby it was refused to delete the name of defendant no. 6 appears to be not according to law because under Order 22 Rule 4 sub-rule 4, the Court should have deleted the name of defendant no. 6 and exempted the plaintiff from substituting the legal representatives. In my opinion, therefore, on the basis of the earlier finding, the petitioners cannot be added as party in the suit because of the fact that the plaintiff cannot be compelled to fight the suit against them as he is not claiming; any relief against them. Moreover, the dispute i.e. being raised by the petitioners is not involved in the suit between the plaintiff and the defendants.

6. It is well settled principles of law that Order 1 Rule 10 C.P.C. speaks about the jurisdiction of the court and not about the right of a non-party. If it is found that the non-party is a necessary party in the suit or property then the Court has the jurisdiction to implead him but a non-party cannot insist for being impleaded as party against the wish of the plaintiff, as has been held by the Apex Court in

Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others, .

7. In view of my above discussion, I find that the learned Court below has rightly rejected the application filed by the petitioner. Therefore, it cannot be said that the impugned order is illegal or the Court has no jurisdiction to pass the order. I, therefore, further find that there is no jurisdictional error as such, the impugned order cannot be interfered with in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this application under Article 227 of the Constitution of India is dismissed.