

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.428 of 2023**

Naresh Jha, Son of Late Ramkarn Jha, Resident of Village- Mahathi, Tole- Sonwar Chak, P.S.-Bibhutipur, Distt- Samastipur.

... ... Petitioner/s

Versus

1. Chandan Kumar S/O Late Akhileshwar Prasad Resident of Village- Mahathi, P.O- Mahathi, P.S.- Bibhutipur, Distt- Samastipur, Bihar.
2. Govind Jha S/O Naresh Jha Resident of Village- Mahathi, Tole- Sonwar Chak, P.S.- Bibhutipur, Distt- Samastipur.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Md. Waliur Rahman, Advocate
		Mr.Kumar Praveen, Advocate
For the Respondent/s	:	Mr.Binod Bihari Sinha, Advocate
		Mr. Amarjeet Chaudhary, Advocate
		Mr. Ajay Dutt Mishra, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT**

Date : 22-05-2025

The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 02.02.2023 passed by learned Sub Judge-IV, Rosera in Title Suit No. 199 of 2020 whereby and whereunder the learned trial court rejected the application dated 07.03.2022 of the intervener-petitioner filed under Order 1 Rule 10 (2) read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

2. Briefly stated, the facts of the case, as it appears



from the record, are that the plaintiff/respondent 1st set filed Title Suit No. 199/2020 before the court of learned Sub Judge-IV, Rosera for a decree of specific performance of contract in respect of agreement for sale dated 05.10.2018 executed by the defendant/respondent 2nd set with ancillary reliefs. The defendant appeared and filed his written statement and contested the suit. The intervener petitioner coming to know about the pendency of the suit approached the learned trial court and filed an application dated 07.03.2022 for impleading him as a party defendant under Order 1 Rule 10 (2) read with Section 151 of the Code. The plaintiff/respondent 1st set filed rejoinder dated 29.03.2022 praying to reject the petition dated 07.03.2022 filed by the intervener. After hearing the parties, learned Sub Judge-IV, Rosera rejected the application of the intervener petitioner vide order dated 02.02.2023, which is under challenge before this Court.

3. The learned counsel for the petitioner submitted that the order of the learned trial court is not sustainable as the learned trial court completely ignored the facts as brought out by the intervener petitioner in his petition seeking impleadment. The intervener petitioner is the exclusive owner of the subject matter of the suit property and the said property is self acquired



property of the intervener. The said property was acquired by way of registered sale deed dated 11.12.1974. The learned trial court failed to appreciate that the defendant has no authority to execute a purported agreement for sale with the plaintiff, which is subject matter of the suit because the intervener petitioner is still alive and the property is his self acquired property. The learned counsel further submitted that the defendant has no authority to execute agreement for sale with regard to the self acquired property of his father with anybody else till the life time of his father and any agreement for sale, which is subject matter of the suit with regard to the self acquired property of intervener petitioner, is nothing but an abuse of process of the court. In these circumstances, the intervener petitioner is necessary party for proper adjudication of the suit.

4. The learned counsel further submitted that when the defendant has no right, title and interest over the suit property, the suit brought by the plaintiff is not maintainable as such. Hence, when the intervener petitioner specifically pointed out that property involved in the suit is his self acquired property and defendant does not have any right, title and interest to deal with the said property during life time of the intervener petitioner, the learned trial court ought to have considered this



fact and ought to have held that intervener petitioner is necessary party for just and proper adjudication of the present suit.

5. The learned counsel further submitted that no doubt plaintiff is *dominus litis* and he can choose the party against whom he wants to contest but the courts have been conferred with the power and discretion to add or remove party to avoid multiplicity of litigation and also for achievement of substantial justice. Moreover, the petitioner has every right to protect his legitimate claim/right with regard to his self acquired property and if he is not allowed to be impleaded as defendant, the intervener petitioner would suffer irreparable loss.

6. The learned counsel further submitted that in the light of aforesaid discussion, it is manifestly clear that the impugned order suffers from material irregularity and, therefore, an interference is much required by this Court.

7. The learned counsel referred to a decision of the Hon'ble Supreme Court in the case of ***Razia Begum vs. Sahebzadi Anwar Begum and Others*** reported in ***AIR 1958 SC 886*** wherein it has been that that there cannot be the least doubt that it is firmly established as a result of judicial decisions that in order 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 raises questions relating to moveable or immovable property.

8. The learned counsel next referred to a decision of Hon'ble Federal Court in the case of ***United Provinces vs. Mt. Atiqu Begum and others*** reported in ***AIR 1941 FC 16*** wherein it has been held that a person would be a necessary party if he ought to have been joined, that is to say, in whose absence no effective decree can be passed at all. He would be a proper party to be impleaded if his presence is necessary for an effectual or complete adjudication and in the given facts and circumstances of the present case, the intervener petitioner is necessary party because no effective decree can be passed at all as the intervener petitioner is having right, title and possession over the suit land.

9. The learned counsel further referred to a decision of this Court in the case of ***Smt. Baby Devi vs. State of Bihar & Ors*** reported in ***2024 (2) BLJ 763*** wherein this Court allowed the application of the petitioner filed under Order 1 Rule 10 (2) read with Section 151 of the Code and in the said case, the petitioner has only been claiming her right, title and interest over a portion of the suit land.

10. The learned counsel also referred to a decision of



the Hon'ble Supreme Court in the case of **P.C. Varghese vs. Devaki Amma Balambika Devi and others** reported in **(2005) 8 SCC 486** to stress the point that in order to avoid multiplicity of proceedings, the plaintiff is allowed to claim a decree for possession and/or partition in a suit for specific performance.

11. The learned counsel thus submitted that if a suit for specific performance is decreed, the question would arise for possession of the suit property and as the intervener petitioner has been denying the right, title and interest of the defendant no.1, entered into an agreement of sale of the suit property, to avoid unnecessary complication, impleadment of the intervener petitioner is essential.

12. Thus, learned counsel submitted that the impugned order is not sustainable and the same be set aside and application of the intervener petitioner be allowed.

13. On the other hand, learned counsel appearing on behalf of the plaintiff/ respondent 1st set vehemently contended that the present civil miscellaneous petition has been filed on frivolous and vexatious grounds and no valid case is made out for interference by this Court in its extraordinary jurisdiction. The learned counsel further submitted that the defendant in the suit, namely Govind Jha, owned and possessed the suit land of



Mauza Rosera and to meet necessity agreed to sale his land and executed a deed of *Mahadnama* bearing No.10971 dated 05.10.2018 in favour of plaintiff/respondent 1st set. When he did not execute the sale deed in favour of the plaintiff, the plaintiff filed the suit before the learned trial court for specific performance of contract. In the said suit, the intervener petitioner filed a petition for impleadment on completely wrong submission. The land, in question, is not self acquired property of the intervener petitioner. It was purchased by Late Ram Karan Jha in the name of his sons, namely Ramraji Jha and Naresh Jha and after partition, the defendant/respondent no. 2, namely Govind Jha came in peaceful possession over the land in question. This defendant further leased out his share to one Santosh Sahni through a registered lease deed dated 17.10.2014 in full knowledge of the petitioner and the intervener petitioner never disputed the said lease. This defendant Govind Jha further executed the *Mahadnama* of his share in favour of plaintiff/respondent 1st set on 05.10.2018 in full knowledge of intervener petitioner. Now, the petitioner is taking a stand that the agreement for sale was entered into without his knowledge, but the same is not correct. Thus, learned counsel submitted that property, in question, came in exclusive share of defendant and



the defendant has been in its possession and he rightfully executed the agreement for sale. Therefore, the learned trial court after proper consideration rightly held that in a suit filed by the plaintiff for specific performance of contract, the intervener petitioner is not a necessary or proper party as he is not to a party to agreement for sale. However, the intervener-petitioner may take his independent course of action. Therefore, the order of the learned trial court is just and proper in the eyes of law and needs to be affirmed.

14. I have given my thoughtful consideration to the rival submission of the parties and also perused the records.

15. Order 1 Rule 10 (2) of the Code reads as under: -

“10 (2). Court may strike out or add parties – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person 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.”

16. Obviously, the court has got ample power to



strikeout the name of any person at any stage of the proceeding.

It is entirely at the discretion of the court and the said discretion is to be exercised by the court for effectually and completely to adjudicate upon and settle all the questions involved in the suit.

The Hon'ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.***, reported in **(2010) 7 SCC 417**, in Para-22, has held as under:-

*“22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. 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 of a proceeding. The discretion under the sub-rule can be exercised either *suo motu* or on the 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 strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.”*

17. However, the discretion of the court under Order 1



Rule 10 (2) of the Code is not unlimited but such discretion could be exercised even against the wishes of the plaintiff in case a party is found to be a necessary or proper party. Thus, the courts can order for impleadment even against the wishes of the plaintiff if a party has a direct and legal interest in the subject matter of the property. With regard to aforesaid proposition, reliance could be placed on the decision of Hon'ble Supreme Court rendered in the case of ***Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.***, reported in ***(2012) 8 SCC 384*** wherein the Hon'ble Supreme Court in paragraph 41 laid down the broad principles governing the disposal of application for impleadment, which is as follows :

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in



whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”

18. However, the Hon'ble Supreme Court in the case of *Kasturi v. Iyyamperumal*, reported in *(2005) 6 SCC 733*, held that in a suit for specific performance of a contract for sale of property, a stranger or a third party to the contract cannot be



added as defendant in the suit. But the Hon'ble Supreme Court in the case of *Sumtibai v. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.)*, reported in *(2007) 10 SCC 82*, has held that the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. It further held that obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. The Hon'ble Supreme Court further held that the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. Even in the case of *Kasturi (supra)*, the Hon'ble Supreme Court held that intervener must be directly and legally interested in the answers to the controversies involved in the suit for specific performance of the contract for sale. It referred to the case of *Amon vs. Raphael Tuck and Sons Ltd.* reported in *(1956) 1 All ER 273* wherein it has been held that a person is legally interested in the answers to the controversies only if he can satisfy the court that it may lead to a result that would affect him legally.

19. Further, in the case of *Razia Begum v. Sahebzadi*



Anwar Begum, reported in **AIR 1958 SC 886**, the Hon'ble Supreme Court has held that in a suit relating to property in order that a third party may be impleaded, he should have a direct or legal interest in the subject matter of the litigation as distinguished from a commercial interest. Legal interest so interpreted means that the result of the suit would affect the third party legally.

20. Now coming to the facts of the case, the intervener petitioner claims his right, title and interest over the suit property. Admittedly, the suit property was purchased in the name of the petitioner and his brother on 11.12.1974. The petitioner further claims that the suit property is in peaceful possession of this petitioner and a house and a vacant land form the suit property and the petitioner has complete right, title and interest over the suit land. Though the respondent no. 1 claims the said property fell in share of his vendor defendant/respondent no.2, the petitioner has been able to show his interest in the title of the property in dispute. He cannot be said to be a busybody or interloper. If the plaintiff succeeds, the result would affect the intervener petitioner legally and the intervener has a direct and legal interest in the answers to the controversies involved in the suit for specific performance of



contract for sale (**Kasturi** supra). The petitioner has been able to show more than a semblance of interest and has been claiming title as exclusive owner of the suit property. As already observed, the outcome of the suit in favour of the plaintiff would directly affect the rights of the intervener petitioner. Moreover, in absence of the intervener petitioner, the decree would remain ineffective if the claim of the intervener is sustainable with regard to right, title and interest over the suit property. In such circumstances, asking the intervener petitioner to take his independent course of action would be multiplying the litigation and blocking the effective and complete adjudication of the subject matter of *lis*. Therefore, I am of the considered opinion that the intervener petitioner ought to have been made party defendant in the suit.

21. In the light of facts and circumstances discussed here-in-above and in view of law laid down by the Hon'ble Supreme Court, I am of the considered opinion that the learned trial court committed error of jurisdiction when it dismissed the petition of the petitioner. Hence, the order dated 02.02.2023 passed by the learned Sub Judge-IV, Rosera in Title Suit No. 199 of 2020 is set aside. Consequently, the petition dated 07.03.2022 filed by the intervener-petitioner under Order 1 Rule



10 (2) read with Section 151 of the Code is allowed.

22. As a result, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	26.03.2025
Uploading Date	22.05.2025
Transmission Date	NA

