

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.237 of 2023

1. Nandu Singh alias Nand Kishore Singh Son of Late Sajjan Singh, Resident of Khaira, C.O. Khijarsaray, P.S. Mahkar, District Gaya, 824233.
2. Pranay Kumar, Son of Late Sajjan Singh, Resident of Khaira, C.O. Khijarsaray, P.S. Mahkar, District Gaya, 824233.
3. Jira Devi, Wife of Ramamnuj Sinha, Resident of- Paleya, P.O. and P.S.- Makhdumpur, District- Jehanabad, Bihar, 804422.

... ... Petitioner/s
Versus

1. Amrendra Bhushan Bhardwaj son of Late Shatrughan Sharma, R/o Village- Paleya, P.S.- Makhdumpur, District- Jehanabad.
2. Dhirendra Bhushan Bhardwaj, Son of Late Shatrughan Sharma, R/o Village- Paleya, P.S.- Makhdumpur, District- Jehanabad.
3. Bharat Sharma, S/o Late Kaildeo Singh R/o Village- Paleya, P.S.- Makhdumpur, District- Jehanabad.
4. Samrendra Bhushan Bhardwaj, S/o Sri Bharat Sharma, R/o Village- Paleya, P.S.- Makhdumpur, District- Jehanabad.
5. K.B. Bhardwaj, Son of Samrendra Bhushan Bhardwaj, R/o Village- Paleya, P.S.- Makhdumpur, District- Jehanabad.
6. Nikhil Bhardwaj @ Nikki, Son of Samrendra Bhushan Bhardwaj, R/o Village- Paleya, P.S.- Makhdumpur, District- Jehanabad.
7. Saroj Devi, W/o Samrendra Bhushan Bhardwaj, R/o Village- Paleya, P.S.- Makhdumpur, District- Jehanabad.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Advocate
For the Respondent/s : Mr. Jitendra Prasad Singh, Sr. Advocate
Mr. Rajeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 25-03-2025

Heard learned counsel for the parties.

2. The petitioners are aggrieved by the order dated 23.09.2022 passed in Title (Partition) Suit No. 09 of 1994 by learned Sub Judge-III, Jehanabad, whereby and whereunder the



petition dated 10.07.2020 filed by the intervenor-petitioners has been found not maintainable.

3. Learned counsel for the petitioners submits that one of the suit properties bearing Khata No. 135, Plot No. 1566 area 0.24 acre was the self acquired property of late maternal grandfather of petitioner nos. 1 and 2 and father of petitioner no.

3. The suit property was purchased by late Indradeo Singh through registered deed No. 1764 of 1960 in exchange of his land as described under Khata No. 147, Plot No. 1250 having area 26 decimals. The said deed has been marked as Ext. K in Title (Partition) Suit No. 09 of 1994. The plaintiffs of Title (Partition) Suit No. 09 of 1994 mischievously added the said plot in the suit property and when the plaintiff/respondent no. 2 applied for measurement of the said land, petitioners came to know about their land being made part of the suit property. Thereafter, the petitioners filed intervenor petition before the court of learned Sub Judge-III, Jehanabad on 10.07.2020 but the said intervenor petition was dismissed vide order dated 23.09.2022 by the learned Sub Judge-III finding it to be not maintainable. The said order is under challenge before this Court.

4. Learned counsel further submits that the impugned



order has been passed without consideration of facts and circumstances. Learned trial court did not consider the fact that the petitioners have legal right over the said plot of land which was acquired by late Indradeo Singh and petitioners are in continuous possession thereof. Learned trial court did not consider the consequences which would follow if the petitioners are not allowed to be impleaded in the partition suit as cloud hover over their title and the partition would not attain finality in absence of the petitioners. Further, refusal to implead the petitioners would lead to multiplicity of litigation. Learned counsel referred to a decision of Hon'ble Supreme Court in the case of *Aliji Momonji and Co. Vs. Lalji Mavli and Ors.*, reported in **1996(5) SCC 379**, wherein the Hon'ble Supreme Court has held that the presence of the respondent is necessary for complete and effectual adjudication of the dispute, though no relief is sought, he is a property party. Learned counsel further submits that it is now established that the petitioners are necessary parties whose presence is necessary for the effective disposal of the suit and the order of the learned trial court is erroneous and the same may be set aside.

5 .Learned senior counsel appearing on behalf of the respondents, however, contends that there is no infirmity in



the impugned order. Learned senior counsel submits that late Indradeo Singh was own uncle of late Kapildeo Singh, who was grandfather of plaintiffs and defendants and was son of late Hulas Singh. Hulas Singh and Indradeo Singh were brother. After death of Hulas Singh, Indradeo Singh had been managing all the property being the karta of the family. The land of Khata No. 135, Plot No. 1566 is the land exchanged from Khata No. 147, Plot No. 1250. It was Indradeo Singh who prepared a document of partition on 18.10.1986 and put signature on the document and divided the property between two brothers Shatrughan Sharma and Bharat Sharma, sons of late Kapildeo Singh. Late Indradeo Singh was examined as D.W. 2 on 04.03.1998 and he admitted existence of document of partition which was Ext. D/1. Learned senior counsel further submits that late Indradeo Singh allowed the said land to be considered as land of the plaintiffs and the defendants of the present case and allowed the same to be partitioned between the brothers. Learned senior counsel further submits that the plaintiffs and the defendants have compromised the case and there are more than 25 plots in the suit property and the land claimed by the intervenor petitioners is one out of such 25 plot. The present suit has been pending since 1994 and at the time of disposal of the



suit petition for intervention has been filed but the intervenors are neither necessary nor proper party. They may claim their right in a separate proceeding and not in the present case filed for partition of their share. Even their claim that the property belongs to late Indradeo Singh is not based on correct fact because in the cadastral record of right Plot No. 1566 is jointly recorded in the name of late Indradeo Singh and late Kapildeo Singh as co-sharer. Learned senior counsel relied on a decision of Hon'ble Supreme Court in the case of ***Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others***, reported in ***2020(13) SCC 773***, wherein the Hon'ble Supreme Court held that in a suit the plaintiff is the *dominus litis* and for determining the question of necessary party there must be a right to some relief against such party in respect of the controversy and secondly no effect decree can be passed in absence of such party. Learned senior counsel thus submits that the impugned order does not require any interference.

6. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Perusal of record shows the petitioners seek impleadment on the ground that one of the plots involved in the suit property of partition belongs to them and they are having right, title and possession



over the said land. Evidently, this suit has been filed for partition between the joint owners and the petitioners do not claim any right in the partition suit with regard to any other property. Moreover, in a partition suit, the court is not expected to decide the title of an intervenor. If an intervenor is aggrieved by inclusion of one of the properties being the partition suit, he is always at liberty to assert his right in an independent proceeding and not by getting himself impleaded in a partition suit which has been pending since last 30 years. The fact is also to be noted that parties to suit claim right and title over the property claimed by intervenors being their ancestral property recorded jointly in the name of Indradeo Singh and Kapildeo Singh and Indradeo Singh not making any objection to the property being included in the schedule of the properties forming part of compromise between the parties. The fact is also to be taken note of about a compromise being arrived at between the parties. This Court in the case of ***Om Prakash Sahu & Ors. vs. Sarju Prasad*** reported in ***2014(1) PLJR 178*** has held that if a compromise is arrived at between the parties, the intervenor or any third party, cannot object to such compromise and frustrate the compromise by seeking his impleadment. Since it is always open for the intervenor petitioners to take recourse of law for



asserting their independent right if they feel that cloud has been cast over their right. The impleadment sought by the intervenor petitioners at this stage in the partition suit is questionable and cannot be allowed.

7. In the light of discussion made hereinbefore, I do not find any infirmity in the impugned and the same is affirmed. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

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