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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.M.J.C. NO. 5791 / 2011

Raj Kishore SinghPetitioner.

Versus

The State of Bihar and others.... Respondents.

Sub:- Other Miscellaneous

S Y N O P S I S

Reliefs:- This writ application has been filed for quashing the order dated 1.4.2009 passed by the Civil Judge-1(J.D.)Madhepura In T.S.no.156/2000 whereby the petition of intervenors-Respondents had set under an order 1 rule 10(2) for impleading them as party defendant in the suit as ~~public~~ public representative has been allowed.

--- T.S. ~~156~~ No.-156/2000 was filed by the

declaration of his rights, title and possession over the suit land and also for declaration that the revisional survey entry of the suit land in the name of state of Bihar is wrong or illegal.

--- Only a part of C.S. Khata no.132 and C.S. Khesra no.619 & 620, area 38 decimal which is in the share of petitioner is the suit land due to wrong entry during revisional survey in the name of State of Bihar.

-- 15.12.08:- The Intervenor- respondents filed petition under order 1, Rule 10(2) of the C.F.C. for impleading them as party defendants as public representative.

--- 19.3.09:- Plaintiff- petitioner filed rejoinder to the petition stating that the intervenors have no concern rights, title, interest or possession over the suit land hence the same is not maintainable.

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Annexure-1. By the impugned order dated 1.4.2009
the learned court below allowed the petition
of Intervenor -respondents .

Hence this writ petition.

...

IN THE HIGH COURT OF JUDICATURE AT PATNA

Writ
(Civil Revisional Jurisdiction)

C.W.J.C. NO 8791 *of 2011*

C. R. 10. / OF 2009.

Raj Nichor SinghPetitioner.

Versus

The State of Bihar & Others *Respondents*
~~Opposite Parties~~

Sub - Other Misc Matter

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IN THE HIGH COURT OF JUDICATURE AT PATNA

Writ
(CIVIL REVISIONAL JURISDICTION)

C.W.J.C. No 8291 / 2011

C. R. No. _____ of 2009.

In the matter of an

application ^{*under Article*} ~~under section~~

227 ^{*Constitution of India*} ~~15 of the Civil Procedure~~

Code.

AND

In the matter of :

Raj Kishor Singh, Son of Late Parneshwarf Singh,

resident of Village: Ekparha, P.O.: Banheria,

District: Madhepura.

.....Plaintiff.....Petitioner.

Versus

1. The State of Bihar, through Collector, Madhepura.

2. The Collector, Madhepura.

3. The Sub. Divisional Officer, Madhepura.
4. The Deputy Collector, Land Reforms, Madhepura.
5. The Anchal Adhikari, Garharia, Madhepura.

.....Defendants...^{Respondents.}~~Opposite Parties 1st~~
Set.

6. Mohan Prasad Singh, son of Late Kedar Prasad Singh,
7. Santosh Kumar Singh, son of Kapleshwar Prasad Singh

both are residents of Villaget Ekparha, P.S.
Garharia, District: Madhepura.

.....Intervenor Defendants...^{Respondents}~~Opposite~~

Parties 2nd Set.

Suit Valued at Rs. 10,000/-

Application valued at Rs. 10,000/-

To,

^{Ms. Rekha Mishra}
The Hon'ble Shri Shiva Kirti Singh, the Acting

Chief Justice of the High Court of Judicature at Patna
and his companion justices of the said Hon'ble Court.

The humble petition on behalf

MOST RESPECTFULLY SHEETHI:

1. That this application ^{is bonafide and} ~~in revision is~~ ^{of appropriate writ/writs for quashing} ~~directed against~~ the order dated 1.4.09 passed by the learned Civil Judge-I, ^{as)} Madhepura in T.S.No. 156/2000 whereby and whereunder the petition of Intervenor ^{Respondent} ~~defendant-opposite Party~~ 2nd Set under Order 1 Rule 10(2) for impleading him as party defendant in the suit as public representative has been allowed.
2. That the plaintiff-petitioner filed T.S.No. 156/2000 in the court of Munsif, Madhepura against the State of Bihar for declaration of his right, title and possession over the suit land and further also for the declaration that the revisional survey entry of the suit land in the name of State of Bihar is wrong and illegal and as such not binding upon him.
3. That the case of plaintiff-petitioner in short is that in cadastral survey entry there was Gairmejarua Khas land in the nature of Pokhar and

Bhind in Mauza Aurahi Ekparha of Khata No. 172(0) Khesra No. 19, 620(0), area 3 Bigha 17 katha, 10 dhurs over which the ex-landlord Gaharia had his ~~rights~~ right, title and possession. During course of time, the Pokhar was filled up and became fit for cultivation and thereafter the ex-landlord from out of total ~~area~~ settled 2 bigha 5 dhurs in favour of the ancestors of petitioner and for which initially joint Jamabandi no. 367 was ~~also~~ created and malguzari was being paid to the State of Bihar after vesting of Jamindari. It is further stated that after family partition the plaintiff-petitioner got 4 one share i.e. 10 katha 1 dhur 5 dhurki of land out of 2 bigha 5 dhur of C.S. Plot No. 619 & 620 for which subsequently separate Jamabandi No. 817 was created in his name and the rent was being paid to the State of Bihar.

4. That the further case of the plaintiff petitioner is that though ~~the~~ he had

possession, right, title over the land in question and also there as cadastral survey khatiyar in the name of settler however the aforesaid land of petitioner and other lands of C.S.Khata No. 172, C.S.Plot No. 619 & 620 have been wrongly entered in the name of Bihar Sarkar during revisional survey by carving out R.S.Khata No. 602, 604 and 608 and for which entry in the name of Bihar Sarkar in revisional survey khatiyar, the petitioner and his co-sharer filed a case u/s 106 B.T.Act before survey settlement authority and is pending.

5. That the further case of plaintiff-petitioner is that after wrong revisional survey entry of his land and other plots of C.S.Plot No. 619 & 620 in the name of State of Bihar, the Intervenor-Opposite Party 2nd set and other public filed petition before Circle Officer, Singheshwar for encroachment of the land of Bihar Sarkar and thereafter a proceeding under Land Encroachment Act

was initiated against the petitioner and his co-sharer in which several orders have been passed by the several forums including by the High Court in C.W.J.C. during long dispute and lastly by the illegal order dated 14.3.2000 of Commissioner, Muzf Division, Saharsa, the petitioner suspected of dispossession from his own land and hence the suit against the State of Bihar instituted.

6. That it is stated that though the dispute with regard to the wrong entry was for many plots but the instant suit had been filed by the plaintiff petitioner for his share of land of 38 decimals only of the part of C.S.Khata No. 172 and C.S.Khesra No. 619 & 620 due to wrong entry during revisional survey in the name of State of Bihar and as such only this part of land is the suit land in the instant case.

7. That further as the dispute with regard

state of Bihar due to wrong entry in the revisional survey khativan and therefore, only the concerned authorities of the State of Bihar have been made party defendants in the suit.

8. That after institution of suit, summons issued to the defendants-State of Bihar but nobody appeared on their behalf for the long period and then the case was put up for ex-parte hearing but later on due to non-appearance of the party, the learned court of Munsif dismissed the suit for non-prosecution in the year 2005, which was again restored and thereafter the State of Bihar also appeared through the counsel.

9. That it is stated that after restoration when the proceeding of the suit was going on then on 15.12.08 the Intervenor-^{responsibility}~~Opposite Parties~~ filed petition under Order 1 Rule 10(2) of the C.P.C. in the court of Munsif, Madhepura for impleading them as party defendants in the suit as public represen-

10. That it would be relevant to mention here that earlier on 20.7.07 also a petition U/Order 1 Rule 10(2) had been filed by the intervenor Mohan Prasad Singh vide Misc. Case No. 1705/24/06 which was restored but even after restoration of original suit he has moved it and thereafter again on 15.12.08 the aforesaid petition filed on behalf of two of the intervenors to implead them as party defendants as public representatives for the safety of government lands, without being qualified to be representative of the public as mandated under Order 1 Rule 9 of C.P.C.

11. That in the petition dated 15.12.08, the intervenors stated that the suit land along with other portions of C.S. plot no 619 & from its Gaimajarua land of Bihar Sarkar and the plaintiff and his co-chausers started to encroach the same in the year 1960 for which a proceeding under Law of Encroachment Act was initiated against them at the instance of intervenor Mohan Prasad Singh on behalf of the public of the village.

12. That it was further stated by the Intervenor Mohan Prasad Singh that he was party in the representative capacity in the long dispute of encroachment proceeding and also filed C. S. J.C. before the Hon'ble Court against the plaintiffs and others with regard to the suit land in encroachment matter and as such they are necessary party to the suit however the plaintiff-petitioner cunningly filed this suit keeping them ignored and hence to protect the interest of public, they may be impleaded as party defendant: 2nd set in the suit.

13. That the plaintiff-petitioner on 19.3.08 filed rejoinder of the aforesaid petition stating that the intervenors have no concern, right, title interest or possession over the suit land nor any relief has been sought for against them and as such they are neither necessary nor proper parties in the suit and hence the instant petition is not maintainable.

14. That the learned court below heard the parties and thereafter by the impugned order dated 1.4.09 allowed the petition of intervenors Opposite Parties for impleading them as defendants in the suit along with State of Bihar although these intervenors have no semblance or any interest, right or title in or on the property.

15. That the learned court below has not considered that the intervenors have no concern right title and interest in the suit land the nature of which is Chittasazua in an being already represented by the State of Bihar to protect the interest of general public.

16. That the learned court below has failed to consider that as the intervenors have no title and interest in the suit land and hence they are neither necessary nor proper parties to be added as party defendants.

17. That the learned court below while passing

the impugned order has also failed to consider the well settled principle that the plaintiff is master of his own litigation and as such he has the right to choose his opponent and the intervenors who are not necessary party and against whom no relief has been sought nor can not dictate or lay down the terms of litigation and is interested that should have to file independent suit.

10. That the intervenors have not brought any material to show that they are representative the public and in that view of the facts also it can not be said that they will protect the interest aims of entire public and hence the impugned order is bad in law and without jurisdiction.

19. That the petitioner will suffer irreparable loss and injury if the impugned order is not set aside.

20. That the petitioner has not moved earlier to this Hon'ble Court against the impugned order.

1.4.09

Being aggrieved by and dissatisfied with

~~Judge T. Madhava in T.S.No. 156/2008,~~

~~the petitioner aforesaid begs to prefer~~

~~this revision application on account~~

~~of the following~~

REASONS

(21) For that the impugned order is erroneous in law and bad on facts.

(22) For that the learned court below has failed to consider that the intervenors have no right title and interest in the suit land nor any relief has been sought for requiring to implead them as party defendants in the suit.

(23) For that the learned court below has also failed to consider that as the nature of suit land is Gairmazarua Aam and therefore the state of Bihar being already party to the suit is legally entitled to protect the entire community.

(24) For that the learned court below has

any interest in the suit property and as to how their addition as a party to the suit would be necessary to decide the controversy in the suit and the rights and interests of the parties who were originally in the suit.

(25) For that the learned court below ought to have considered that the two persons can not claim themselves to represent the entire community simply because they were parties in the encroachment proceedings.

(26) For that the learned court below also ought to have considered that the petitioner has been claimed over the suit land due to his possession and title after taking settlement from B-landlords but the case was wrongly entered in revisional survey as Gaimasaru Am for which State of Bihar is already a party to protect the interest of the entire community regarding public right and so the addition of intervenors is at

(278) For that the intervenors have not taken permission from the learned court as mandate under Order 1 Rule 8 as such they do not qualify to be public representative.

(279) For that the plaintiff-petitioner being master of his own litigation can not be compelled to add intervenors as party to the suit.

(280) For that in the impugned order in the facts and circumstances of the case would prejudice the case of petitioner and hence it is to be set aside.

(281) For that otherwise also the impugned order is bad and hence sit to be set aside.

It is, therefore, prayed that Your Lordships may graciously be pleased to admit this application, issue notice to the parties, call for the records and after hearing the parties be further

-15-

pleased to set aside the impugned order dated 1.4.09 passed by the Civil Judge-I Madhepura in T.S.No. 12 156/2000.

A/D

During the pendency of this civil revision be further pleased to stay the further proceeding in T.S.No. 156/2000 pending in the court of His Honble/Civil Judge-I(S.D.), Madhepura.

A/D/R

Pass such other orders or orders as Your Lordships may deem fit and proper. And for this, the petitioner shall ever pray.

A.F.F.I.L.A.Y.L.L.

I, Raj Nichor Singh, aged about 75 years, late Parmeshwari Singh, resident of Village of Exparha, P.S. Anbaria, District Machhura, do hereby solemnly affirm and state as follows :

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of this petition have been read over and explained to me in Hindi which I have understood the same. The statements made therein are true and correct to the best of my knowledge and information derived from the records of the case, which I believe to be true and correct.

dx

CERTIFICATE

It is to certify that the grounds set forth above are good grounds for this Civil Revision.

It is further certified that there is no need to serve the notice upon Attorney General of India or Advocate General of Bihar under Order XXIII-A Rule 1 of the Code of Civil Procedure.

It is my instruction that this civil revision out of which the suit in this matter has never come up before this Hon'ble Court previously.

ADVOCATE FOR THE PETITIONER.

~~Amendment~~
In the Court of United, Madhapur 18

18

TS - 156/2000

214/2012

17-4-09 17-4-09 17-4-09

17-4-09

2321
17-4-09

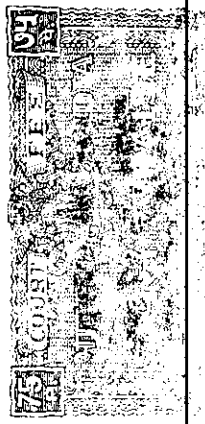
01-04-09

Plaintiff file for attendance. The state of Bihar & intervenor also file their attendance.

Record has been placed for passing order on the petition dt. 15/2/09 filed by intervenor u/01 rule 10(2) of the C.P.C. for adding them as party to this suit.

This suit has been brought by the plaintiff against the State of Bihar for declaration of title and possession over the

Content



17-4-09

157/2108

Court of Civil - Judge (M. A. M.) Madhepura.
Ts. 156/00

Rajkishore Singh vs. State of Bihar

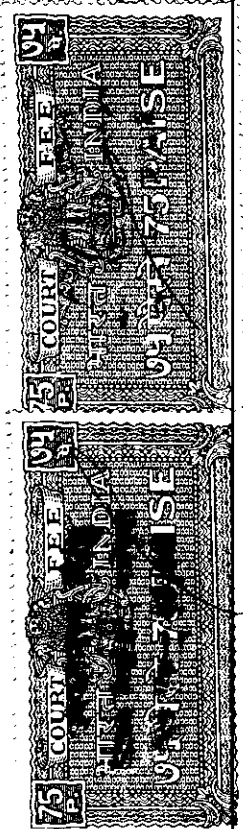
Contd - - Sam. The case of the plaintiff is
010479 that Revisional Survey entry in the name
of State of Bihar has been wrongly
recorded.

The intervenor in his application
has said that the suit land is
Gairmazaruwa land of Bihar Sarkar
and plaintiff has encroached upon the
same for which he had filed several
applications against the plaintiff
before the C.O. and a long dispute
on several forums including the filing
C.W. J. C. between the intervenor
and plaintiff has occurred in part,
but the plaintiff has cunningly filed
this suit keeping the defendant
ignorant from this suit land. So
this petitioner is a necessary party
to this suit and they may be allowed
to be added as party.

It has been submitted
on behalf of the Counsel of the
petitioner to avoid the multiplicity
of suit and to protect the interest
of the public at large effectively
the petitioner may be allowed to
join the suit.

It is submitted on behalf

Contd - -

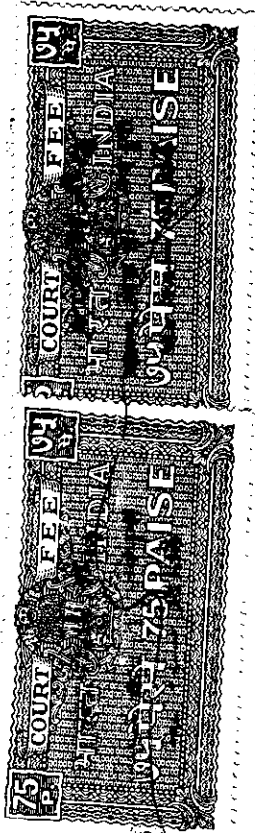


Court of C.M.I. - Judge S. (O.R.M.) Mookherjee

T.S. 156/00
Rajkishore Singh vs State of Bihar

Contd.
Chou 79

that petitioners have got no interest in the suit land so they are not the necessary party in the suit. The learned Counsel of the plaintiff filed a citation reported in 2000 (3) P.L.J.R. page 514 and has submitted that the Hon'ble Patna High Court in this ruling as held that where the govt. is party then no private person is required to be made party, the govt. itself is competent to protect its interest as well as the interest of public at large. After going through the judgement it reveals that in that case three witnesses were examined before the trial Court and then petition writ rule 10(2) C.P.C. was filed and which was allowed by the trial Court but the Hon'ble Court was pleased to set aside the order of trial Court on this ground and also on the ground that the trial of the suit had begun and not on the sole ground that govt. was itself party therefore the petition was rejected. Considering the submissions



Const of Cril - Judge (C.O.M) made peror
N. 40 DS. 156/00 N. 40 N. 40
rajkishore Singh v. State of Bihar
7-4-09 20
7-4-09

Conrad
01-04-09

of parties and circumstances of the
Suit it appears that this petitioner
has been at logger head with plaintiffs
with respect to suit land on several
forums including filing of the C.W.D.C.
but the plaintiff in this suit has
not made him party. Order 1 of
C.P.C. provides that even a single
person can be allowed as party
to protect the interest of public
at large to avoid the multiplicity
of the suit and in the interest
of justice the prayer of the petitioner
is allowed and they are allowed to
know as defendants of this suit
along with the State of Bihar.
Put up examination filing vs. initials
of intervenor defendants.

200/2



Dictated

Cril - Judge (C.O.M.)

[Handwritten signature]
7/4/09

[Handwritten signature]
7-4-09

In the Court of Munsif, Madhepura

S.S. 156/2000

Raj Vishar Singh vs. State Bihar Patna

01.12.08 Plaintiff file his attendance. The State of Bihar & intervenor also file their attendance.

Record has been placed for passing order on the petition dt. 15.12.08 filed by intervenor U/O 1 rule 10(2) of the C.F.C. for adding them as party to this suit.

This suit has been brought by the plaintiff against the State of Bihar for declaration of title and possession over the

Contd.

01.04.09

same. The case of the plaintiff is that Revisional Survey entry in the name of State of Bihar has been wrongly recorded.

The intervenor in his application has said that the suit land is Gaimasaruwa land of Bihar Saurar and plaintiff has encroached upon the same for which he had filed several applications against the plaintiff before the C.O. and a long dispute on several forums including the filing C.M.J.C. before the intervenor and plaintiff has occurred in past, but the plaintiff has cunningly filed this suit keeping the defendant ignored from this suit land. So this petitioner is a necessary party to this suit and they may be allowed to added as party.

It has been submitted on behalf of the counsel of the petitioner to avoid the multiplicity of suit and to protect the interest of the public at large effectively the petitioner may be allowed to

Contd...
01.14.69

that petitioners have got no interest in the suit land so they are not the necessary party in the suit. The learned counsel of the plaintiff filed a citation reports in 2000(3) P.L.J.R. page 114 and has submitted that the Hon'ble Patna High Court in this ruling as held that where the Govt. is party then no private person is required to be made party, the Govt. itself is competent to protect its interest as well as the interest of public at large. After going through the judgment it reveals that in that case three witnesses were examined before the trial court and then petition U/O 1 Rule 18(3) C.P.C. was filed and which was allowed by the trial court but the Hon'ble Court was pleased to set aside the order of trial court, on this ground and also on the ground that the trial of the suit had began and not on the sole ground that Govt. was itself party therefore the position was rejected.

Contd.:
01.06.09

of parties and circumstances of the suit it appears that this petitioners have been at laggers head with plaintiffs with respect to suit laid on several forum including filing of the C.S.J.C. but the plaintiff in this suit has not made him party. Order 1 of C.S.C. provides that even a single person can be allowed as party to protect the interest of ~~par~~ public at large to avoid the multiplicity of the suit and in the interest of justice the prayer of the petitioners is allowed and they are allowed to move as defendant s of this suit along with the State of Bihar. Put up on 21.06.09 for filing P.S. on behalf of Intervenor defendant s.

Dictated
by - Illegible.
Civil Judge-I (J.D.)