

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1095 of 2024

Sri Prakash @ Shree Prakash S/o Late Ramchandra Rai, Resident of Sundarpur Kharauna, P.O. - Mahuasia, P.S.+ Anchal+Sub Division and District- Sheohar.

... .. Petitioner/s

Versus

1. Arun Kumar Ashana S/o Late Nageshwar Prasad, Resident of village- Sundarpur Kharauna, P.O.- Mahuasia, P.S., Anchal, Sub Division and District- Sheohar.
2. Mukul Kumar, S/o Ajay Kumar, Resident of village- Sundarpur Kharauna, P.O.- Mahuasia, P.S., Anchal, Sub Division and District- Sheohar.
3. Manoranjan Devi, D/o Late Ambika Prasad, W/o Krishnanand Prasad, Resident of Village- Sonaul Subba, P.O. - Gharwara, P.S. - Anchal- Majorganj, Sub Division - Sitamarhi Sadar, District - Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Jha, Advocate
For the Res Nos. 1 & 2	:	Mr.Vivek Prasad, Advocate
		Ms. Roona, Advocate
For the Res. No. 3	:	Mr. Pratyush Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 01-07-2025

The petitioner has preferred the instant civil miscellaneous petition being aggrieved by the order dated 28.08.2024 passed by learned District Judge, Sheohar in LA Case No. 21 of 2004, whereby and whereunder the learned trial court rejected the petition filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure (in short 'the Code').

2. Shorn of unnecessary details, the facts of the case are that the respondent nos. 1 and 2 filed one LA Case No. 21 of 2004 for granting Letters of Administration in their favour with



respect to land bearing S.P. No. 683 under Khata No. 71 area 72 decimals. The aforesaid LA case has been filed on the basis of an unregistered Will dated 17.09.2000 executed by testator Most. Lalit Kishori Devi. The testator was the wife of one Krishna Prasad and her sisters-in-law are Manoranjan Devi and Sarojan Devi and Manoranjan Devi is one of the objectors in the LA case. The father of the petitioner purchased the aforesaid suit land from Manoranjan Devi and got it mutated his name and started paying rent to the Govt. of Bihar. The father of the petitioner died in the year 2022 and thereafter the property was partitioned amongst the brothers of the petitioner and the suit property came into share of the petitioner. The petitioner, who is a Central Government employee, filed an application under Order 1 Rule 10(2) of the Code for being impleaded as a party in the aforesaid LA case. The applicants/respondents nos. 1 and 2 filed their objection. The learned trial court, after hearing the parties, dismissed the petition of the intervenor and the said order is under challenge before this Court.

3. Learned counsel for the petitioner submitted that respondent no. 3 Manoranjan Devi has filed objection in the LA case and has been contesting the matter. But as she has been getting old she was gained over by the applicants/respondents 1st



set. The petitioner being a Central Government employee has been posted at different places and performing his duties. For this reason he could not know about pendency of the LA case and only after death of his father when the property came in his share, the petitioner came to know about the litigation. As Manoranjan Devi was neither contesting the LA case nor was having any interest, the petitioner realized that he needs to protect his interest being the purchaser of the land. Manoranjan Devi did not even appear as witness in the case. Her grandson appeared as OPW 5 and recorded his deposition contrary to the objection filed by Manoranjan Devi and this witness rather supported the case of the applicants/respondents. At the same time, he also asserted that Manoranjan Devi would not come to depose before the court. It goes on to show that Manoranjan Devi was totally gained over. However, the learned trial court did not consider this fact and rejected the application of the intervenor-petitioner on erroneous grounds. The learned trial court further failed to take into consideration this fact that the intervenor-petitioner has a right to protect his interest as he has now stepped into shoes of Manoranjan Devi and being a purchaser prior to the filing of the LA case, the petitioner has got every right to contest the case and challenge the genuineness



of the Will as the same stand was taken earlier by his vendor Manoranjan Devi. Learned counsel further submitted that the learned trial court committed an error of jurisdiction in passing the impugned order as the intervention application of the petitioner was rejected on the ground that it was filed at much belated stage and the vendor is still contesting the case. Learned counsel further submitted that another ground for rejection taken by the learned trial court is that earlier the father of the petitioner filed an application for impleadment which was rejected and the petitioner is claiming his title through his father, but the same is not a valid ground. The said order was not challenged as Manoranjan Devi had been contesting the LA case and interest of the father of the petitioner was being protected but now the situation has changed and facts are sufficient to show that Manoranjan Devi has not been contesting the suit rather she is now favouring the applicants. Learned counsel relied on a decision of learned Single Judge of this Court passed in *C.W.J.C. No. 10415 of 2011* dated 30.01.2013 wherein the learned Single Judge upheld the order of the learned trial court by which the learned trial court reviewed its own order in the probate proceedings and added the intervenor as a party though his petition for impleadment was earlier rejected. The



intervenor purchased the land from the objector before the probate case was instituted and under such circumstances the learned Single Judge has held that he has a right to protect his interest. On the point of impleadment of a party, learned counsel next referred to a decision of learned Single Judge of this Court dated 05.09.2023 passed in ***Civil Miscellaneous Jurisdiction No. 1303 of 2018*** wherein it has been reiterated that with respect to one subject matter the determination of interest of all the parties shall be done in one suit and thus impleadment petition of respondent no. 1 was allowed and learned Single Judge upheld the order of learned trial court. Learned counsel also referred to a decision of Hon'ble Supreme Court in the case of ***Mumbai International Airport (P) Ltd. Vs. Regency Convention Centre and Hotels (P) Ltd.***, reported in ***(2010) 7 SCC 417*** about who are the necessary and proper parties. Learned counsel also referred to a decision of Hon'ble Supreme Court in the case of ***Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others***, reported in ***(1992) 2 SCC 524*** wherein the Hon'ble Supreme Court has held that the court has judicial discretion which it has to exercise having regard to facts and circumstances of the case and in exercise of this discretion court can direct a plaintiff,



though *dominus litis*, to implead a person as a necessary party defendant. Learned counsel lastly referred to a decision of this Court in ***Ekta Sahkari Grih Nirman Samiti Ltd. Patna Vs. The Estate of Late Ram Pancham Singh & Ors., C.W.J.C. No. 16881 of 2011*** dated 08.12.2011 submitting that in the similar circumstance, learned Single Judge of this Court held that the petitioner stepped into the shoes of the vendor and he has got interest in the said property and was required to be heard in support of the objection filed by the petitioner predecessor. Thus, learned Single Judge held that the petitioner is a proper party in the proceeding and he should be impleaded as a party by the learned trial court. Thus, learned counsel submitted that the learned trial court did not consider the facts in proper perspective and did not consider the proposition of law propounded by the superior courts and passed an erroneous order which could not be sustained.

4. Learned counsel appearing on behalf of respondents contended that there is no infirmity in the impugned order and the same is proper and valid. Learned counsel at the outset submitted that the petition filed earlier by the father of the petitioner seeking impleadment has been rejected by the learned trial court and the said order has attained finality since it has not



been challenged. Since the petitioner has stepped into the shoes of his father and has been claiming through him, the decision would act as *res judicata*. Learned counsel further submitted that since the issue already stands settled, the petitioner cannot re-agitate the same issue again and again. Learned counsel further submitted that in the present case only the validity of the Will is to be tested to see whether the Will has been executed or not and the scope of the same cannot be enlarged to decide title over the subject matter of the *lis*. The petitioner has been claiming the right and title through a bogus document as Manoranjan Devi had no authority to execute any sale deed with respect to the land for the testator had executed the Will. The petitioner is a complete stranger to the LA case and cannot be made party in a probate proceeding. Learned counsel further submitted that the sale deed was brought into existence during the pendency of the probate proceeding and is hit by provisions of *lis pendense*. Considering this aspect of the matter, the intervention application filed by the father of the present petitioner was rightly rejected by the learned trial court vide order dated 26.09.2016 and the same has attained finality inasmuch as it has not been disturbed by any superior court. As this issue has already been settled by the competent court, the



present petitioner cannot be allowed to reopen this issue. Learned counsel further submitted that, moreover, it is a proceeding for grant of Letters of Administration and it is not a title suit. For this reason, the remedy of the petitioner to get his claim decided in a proper title suit. Learned counsel further submitted that the learned trial court has discussed the entire matter at length and finding no substance in the petition of the intervenor/petitioner, it has rightly rejected the said petition of the intervenor. The impugned order is a well discussed, reasoned and speaking order and needs no interference by this Court under the supervising jurisdiction of this Court under Article 227 of the Constitution. Learned counsel next referred to the case of ***Bikrama Prasad Vs. Bharat Prasad & Anr.***, reported in ***2002(1) PLJR 176*** and relied on paragraphs 7, 8 and 9 of the said decision which read as under:-

“7. So far as the legal position is concerned, it is well settled that in case of threat of dispossession of any person not bound by the judgment and decree, if an objection is filed under Order XXI Rule 97 of the Code, then that has to be considered and disposed of under the relevant provision and remedy of appeal or revision is provided under the said Order. Suit is not remedy in



such matter and the same is barred. But the question in this case is as to whether the objector/opposite party no. 2 is bound by the decree or not?

8. Admitted fact is that the suit was filed by the petitioner/plaintiffs against the father of the objector. It was contested by the father of the Opp. party No. 2 who lost up to the High Court. The objection petition filed by Opposite Party N. 2 in substance amounts to challenging the validity of the decree on the ground that his father was gained over by the plaintiff/decreed holder, on that account, thus his claim is independent of the claim of his father. In my view, for such relief the remedy is elsewhere and not an application under Order XXI Rule 97 of the Code. The objector is bound by the decree unless it is set aside on the ground taken by him. His case is not covered by Order XXI Rule 97 of the Code. This apart, the Court has to consider that the proceeding of the Court is not abused by a party by taking recourse to the pure technical view of the matter. The eviction suit was lost by the father of Objector. The Objector does not have any independent title over the suit land and as such entertainment of his objection is an abuse of the process of



the Court.

9. In this civil revision application, it has been specifically stated that even the sale deed which has been produced by the objector is with regard to Khata No. 319 Khesra No. 449 area one Katha five dhurs, whereas the decree was with regard to lands of plot bearing Khata no. 359 Khesra No. 446 area 9 dhurs. No rejoinder has been filed to the aforesaid statement made in the civil revision. Thus, on that ground also it can be safely said that the Court below could not have entertained the objection and stayed the execution case.”

Learned counsel also referred to another decision of a learned Single Judge of this Court in the case of ***Lalit Prasad Sah and Ors. vs. Mahendra Sah and Ors.***, reported in ***2007(4) PLJR 427*** wherein the learned Single Judge held that when the petitioner’s father was held to be a person set up then it will be travesty of justice, if the decree-holder, now at the instance of his sons, are deprived of the fruits of the decrees only on the ground that petitioners have chosen to file application under Order 21 Rule 97 of the Code. Learned counsel thus submitted that the petitioner has been trying to put up a claim for which there is no basis and he can seek his remedy with regard to title



and possession before a court of competent jurisdiction and petitioner is not remedyless.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Admittedly, the father of the petitioner tried to intervene in the matter and failed. The learned trial court while rejecting the application of the father of the petitioner vide order dated 26.09.2016 observed that it is not a title suit and question was whether Will was executed by the testator in favour of the applicants or not and it has been held by learned trial court that intervenor/objector was not a necessary party and intervention petition has no legal weight. This order has not been challenged and as the petitioner claims through his father, the finality attained by the order should also act against the interest of the petitioner.

6. Though it has been held time and again that a person having semblance of interest could be allowed to intervene in the matter and the courts allow such application, but power under provision of Order 1 Rule 10(2) of the Code is a discretionary power and the discretion is to be exercised judicially and completely and effectively to adjudicate the dispute between the parties. On this proposition, the petitioner



might have a good case considering the fact that the vendor of the father of the petitioner has become indisposed and is not in a position to depose before the learned trial court but considering the legal position that the present petition is hit by principles of *res judicata*, I am not inclined to entertain the challenge to the impugned order. Moreover, the impugned order has been passed after due consideration of all the facts and it is a speaking order and while exercising jurisdiction under Article 227 of the Constitution, this Court could not lightly interfere with such orders.

7. Hence, in the light of discussion made hereinbefore, I do not find any infirmity in the impugned order dated 28.08.2024 and the same is affirmed. Accordingly, the present petition stands dismissed.

8. However, the petitioner is liberty to have recourse of law in appropriate proceeding before a court of competent jurisdiction to establish his rights, if so advised.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	13.05.2025
Uploading Date	01.07.2025
Transmission Date	NA

