

C.M.P. No.979 of 2022

Sabita Sahu ... **Petitioner**

Nishakar Singh and others ... Opposite Parties

For Petitioner : Mr. Anupam Dash,
Advocate.

For Opposite Parties

: Mr. P.K.Satapathy,
Advocate

CORAM:
JUSTICE SASHIKANTA MISHRA

JUDGMENT
31.10.2025.

Sashikanta Mishra, J.

In this application filed under Article 227 of the Constitution of India, the Petitioner, who is the Plaintiff in C.S. No.496/2021 pending in the Court of learned Senior Civil



Judge, Baripada, seeks to challenge the order dtd.17.8.2022 passed by the said Court allowing the application filed by the present Opp. Party Nos.1 to 5 for being impleaded as Defendants under Order I Rule 10 of C.P.C.

2. The facts of the case, relevant only for deciding the present application are that the Petitioner, as Plaintiff has filed the above suit seeking the following relief;

“(a) Let a decree for permanent injunction be passed against the defendants directing them not to come over the suit land.

(b) A decree for compensation of Rs.30,000/- be passed against the defendants in favour of the plaintiff and the same may be realized from the defendants through the process of court.

(c) That the cost of the suit be decreed.

(d) Any other relief or relives to which the plaintiff is entitled in law and equity be also decreed.”

3. Her case is that she had purchased the suit property from one Narana Prasad Sahu, the recorded owner vide RSD dated 21.5.2019 and entered into possession. The suit land was originally agricultural land which was converted to Gharabari (Homestead) vide O.L.R. Case No.196/2020. The land was also mutated in her favour and R.O.R. was published. The proforma Opp.Party-defendants disturbed her



possession by uprooting the boundary cement pillars which the Petitioner discovered on 25.8.2021. Again, on 01.9.2021 when the Petitioner and her husband tried to construct boundary wall, the said defendants obstructed them. The Petitioner approached the Police Station, but no action was taken as the dispute was civil in nature. Hence, the suit.

4. The contesting Defendants (Proforma Opp.Party Nos. 6 to 9) filed a joint written statement, inter alia, taking the plea that as per C.S. R.O.R., the suit land was of jungle kisam and communal in nature for which no private individual like the Petitioner can get the same recorded in his/her favour. The villagers of Jamunia, Ambagadia, Purunia as well as the defendants have communal interest over the land which is being used as a public road, playground, grazing field etc.

5. At this stage, the third-party interveners (present Opp.Party Nos.1 to 5) filed application under Order I Rule 10 of C.P.C. for being impleaded as parties to the suit. They also pleaded that the suit was of jungle kisam and communal in nature which cannot be recorded in the name of any private individual. It was also stated that the villagers have communal



interest over the property. The Plaintiff filed objection to the petition. By the order impugned, the petition was allowed and the said third party interveners were permitted to be impleaded as defendants.

6. Heard Mr. Anupam Dash, learned counsel for the Plaintiff-Petitioner and Mr. P.K.Satapathy, learned counsel for the Defendants-Opp. Parties.

7. Mr. Dash would argue that in a suit, the plaintiff is *dominus litis* having right to choose his adversaries against whom he seeks relief. He cannot be forced to implead someone as defendant against his wish. The Court below has not given any reason for allowing the petition except to avoid future litigation, which is not a valid reason for allowing the petition for impleadment. Mr. Dash further argues that even otherwise, it can be seen from the petition filed under Order I Rule 10 of C.P.C. that the same is nothing but a verbatim copy of the stand taken by the original defendants in their written statement. Therefore, even assuming that the land is communal in nature, the original defendants are adequately



protecting the interest of the villagers. Mr. Dash has relied upon the following judgments to support his contentions:

- 1) *Sudhamayee Pattnaik v. Bibhu Prasad Sahoo*, (2022) 17 SCC 286**
- 2) *Panjum Bibi v. Najma Alim*, 2008 SCC OnLine Ori 273**
- 3) *Kamal Kumar Bhawasinka v. SMV Beverages (P) Ltd.*, 2022 SCC OnLine Ori 3480**
- 4) *Md. Allauddin v. Collector*, 2016 SCC Online Ori 8.**

8. Per contra, Mr. Satapathy would argue that the land in question being originally communal in nature, all the villagers including the neighbouring villagers have an interest in it. Moreover, the land is being used for communal purposes like grazing of cattle, playground for children, public road etc., Therefore the villagers, at least in a representative capacity are necessary parties. The Trial Court rightly allowed the application. Mr. Satapathy has relied upon the following judgment in support of his contentions:

- (1) *Rahul S. Shah v. Jinendra Kumar Gandhi*, (2021) 6 SCC 418.**

9. Order 1 Rule 10 of C.P.C. reads as follows:

“10. Suit in name of wrong plaintiff.—(1) Where a suit has been instituted in the name of the wrong



person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the 1 [Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”



10. Thus, it is ordinarily permissible for the Court to implead parties if it feels that the said party's presence would be necessary to enable the Court to effectually and completely adjudicate upon and settle the questions involved in the suit. The above is the test to be applied to the facts of the present case.

As already stated, it is claimed that the suit land is communal in nature, though the plaintiff claims to have validly purchased the same from the recorded owner and has also converted its nature and mutated it in her name. It would be significant to refer to the stand taken by the original defendants in their joint written statement of which, Paragraphs 11 and 12, being relevant are reproduced below:

"11. That, the suit land as per C.S. R.O.R. was kisam Jungle which is communal in nature for which the provision U/o-1, R-8 of C.P.C. is mandatory provision to comply, but the plaintiff has not complied the same for which the suit is liable to be dismissed with cost.

12. That, fact of the suit is that the suit land as per C.S.R.O.R. vide CS. Khata No. 419/5/3 plot No. 2400, A16.35dec kisam Jungle and plot No 2415 Kisam Jungle A35.17 dec and that above C.S. Khata No. had/has been recorded under Anabadi Khata and that as the kisam of the above plot were/are Jungle the same were/are absolutely communal in nature for which all the villagers of Jamunia,



Ambagadia, Purunia as well as the Defendants had have their communal interest in each and every inch of the above land and accordingly the predecessors of Defendants the villagers had/ have been possessing the above land as their Jungle, public road, playground for their children, grazing field for their four-footed animals, Puja Mandap for their annual festivals and meeting place etc peacefully from the time of provincial settlement and after their death these Defendants as well as the villagers of Jamunia, Bangalidahi, Churmara, Angargadia, Ambagadia, Mantridahl, were/are possessing the suit land as their absolute communal property peacefully within the direct knowledge of the vendor of the plaintiff, predecessors of plaintiff as well as the plaintiff for more than 100 years collectively till today.”

11. Interestingly, in the application filed by the third party-interveners under Order I Rule 10 of C.P.C. the following has been stated:

“1. That, the suit land as per C.S. R.O.R. vide C.S. Khata No 419/5/3 plot No. 2400, A16.35dac Kisam Jungle plot No 2415, A35.47der Kisam Jungle was recorded under Anabadi Khata with Kisam of the above plots were/are Jungle, the same was/is absolute communal in nature for which we the 3rd party petitioners as well as villagers of Jamunia, Ambagadia & Purunia had/ have communal interest in each and every inch of the above plots and the 3rd party petitioners were/are possessing the above land as their public road, playground for their children,



grazing field for their four-footed animals, Puja Mandap for their annual festivals and meeting place etc peacefully from the time of provisional settlement within the direct knowledge of the petitioner as well as public in general till today.

2. That, as the suit land was/is jungle in kisam the same was/is absolute communal property of the 3rd party petitioners, villagers of Jamunia and nearby villagers for which none of the private Individuals was/is entitled to record any portion of the above plots, for which the 3rd party petitioners being the villagers of Jamunia are necessary party in this proceeding.”

12. Thus, there is no difference at all in the stand taken by the original defendants in their written statement and the plea of the third party-interveners as per their application for impletion. So, the argument that the land being communal in nature, the villagers have interest in it, which needs to be protected is unacceptable for the reason that the original defendants have specifically taken such stand in their written statement. The third-party interveners have not put forth any other plea to demonstrate as to how their impletion is necessary for effectual and proper adjudication of the case. In other words, it has not been shown or demonstrated that the



suit as framed cannot be effectively adjudicated in their absence. In the case of **Sudhamayee Pattnaik (supra)**, the Supreme Court held as follows:

“9. At the outset, it is required to be noted that the defendants in the suit filed application under Order 1 Rule 10 CPC and prayed to implead the subsequent purchasers as party defendants. The suit is for declaration, permanent injunction and recovery of possession. As per the settled position of law, the plaintiffs are the dominus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as the defendants against the wish of the plaintiffs. Not impleading any other person as the defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.”

In the case of **Kamal Kumar Bhawasinka (supra)**, a coordinate Bench of this Court relying upon



Sudhamayee Pattnaik and others (supra) has held as follows:

“7. Upon hearing learned counsel for the parties and on perusal of case law cited by learned counsel for the Petitioner, this Court is of the considered opinion that the Plaintiff being dominus litis has the liberty to choose the party against whom it would claim relief. The necessary conclusion would be that non-joinder of party is at the risk of the Plaintiff. It cannot be compelled to implead parties unless the Court suo motu directs for impleadment of party. But in no circumstances, the Defendant can compel the Plaintiff to implead party to the suit. In the instant case, the Court has passed the order on an application filed by the Defendant. When the Plaintiff does not claim any relief against said Laxmi Enterprisers, it cannot be compelled to contest litigation against said party.”

In the case of **Md. Allauddin (supra)**, which is a case involving almost similar facts as the present case, this Court was of the following view:

“11. Law as settled by Hon'ble the Apex Court in the case of "Panjum Bibi @Ramjan Bibi Petitioners v. Najma Alim" (supra) specifically observing that while considering the application under Order 1 Rule 10 of C.P.C., the Court must keep in mind that the plaintiff is the sole architect of the plaint and he has a right



to choose his own adversary against whom he seeks relief, mere apprehension of the party that the plaintiff and defendants of the suit may collusively get their suit decided remains unfounded as whatever may be the judgment and order in a suit, it cannot bind him, as he was not a party in the suit. This decision completely fits in the case of the petitioner”.

13. On the other hand, in the judgment cited on behalf of the third-party interveners namely, **Rahul S Shah (supra)**, the facts were completely different inasmuch as the impletion was sought for at the stage of execution proceeding. It was held that the Court may proceed to add necessary or proper parties under Order I Rule 10 of C.P.C. based on the report of the Commissioner or an application made in that regard. Said observations were made in the context of determination of the person in possession over the suit property to be ascertained by issuing a commission under Order XXVI Rule 9 of C.P.C. Obviously, the judgment cannot be applied to the facts of the present case.



14. Perusal of the impugned judgment reveals that the Court below has not cited any reason justifying implection of the third party-interveners. It has only been stated that the same would avoid multiplicity of suits but exactly how, has not been spelt out at all. As already stated, the plaintiff being *dominus litis* cannot be forced to implead someone against whom he does not specifically seek any relief. It goes without saying that if he has chosen not to, he does so at his own risk.

15. For the foregoing reasons therefore, the impugned order cannot be sustained in the eye of law and warrants interference. Resultantly, the C.M.P. is allowed. The impugned order is set aside. The application filed by Opp. Party Nos.1 to 5 under Order I Rule 10 of C.P.C. is hereby dismissed.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera