

**In the Court of Additional District Judge- II, Aurangabad.
(Case no. -Title appeal – 12 of 2005, 69 of 2023.)**

Ram Naresh Mishra S/o Jai Prakash Mishra R/o Gothauli,
P.S.- Barun,Dist.- Aurangabad..... Appellant.

Vs.

State of Bihar & others. Respondents.

ORDER

Dated: 10.9.2024.

1. Case record was put up for passing order on the petition dated 22. 12. 2023 filed on behalf the appellant under the provision of order 10 of rule -1and under section 151 of C. P. C. and its rejoinder dated 8. 5. 2024 filed on behalf of the respondent no-1.
2. Heard the learned counsels for both the parties on the aforesaid petition and its rejoinder filed on behalf of the respondents dated 8.5.2024.
3. The learned counsel for the appellant has submitted that appellant filed a title suit vide T.S no – 286/1992 originally against the respondent no – 1 Satyendra Ram, respondent -2 Anchladhikari, Barun Anchal, Additional collector, Auranganad and S.D.O. Sadar, Aurangabad in the court of sub Judge, Aurangabad and during the pendency the suit a petition filed by the plaintiff to make the party of Bihar government through collector and prior to file the aforesaid petition plaintiff had sent notice under the provision of section 80 of C.P.C. and same was received in the office of collector, Aurangabad and a petition was filed on behalf of the plaintiff in the court of sub Judge – V praying there in to call for the volume -II of original receiving register of year 1992 (serial no-3226 dated 20.9. 1992) from the office of collector, Aurangabad and the same was allowed and requisition for the aforesaid register was sent by the court of learned Sub Judge-V on 5. 2. 2000 to the office of collector , Aurangabad but the aforementioned register was not produced in the court for perusal, due to which Bihar government through collector was not made party in suit and petition filed by plaintiff remained pending and on sole ground that plaintiff not made party of the Bihar government through collector, Aurangabad and in result the suit of the plaintiff was dismissed. The learned further contended that plaintiff preferred the instance appeal against the judgement & decree passed by the court of learned sub judge- V passed on 30.3.2005 & 8.4.2005 respectively, during the pendency of the appeal appellant(plaintiff) filed a petition to make the party the Bihar government through collector but same was dismissed only sole ground that plaintiff has not served notice to collector , Aurangabad under the provision of section 80 of C.P.C. by the court of learned F. T. C.- II *vide* order dated 29. 2. 2008. The learned counsel has further contended that appellant applied for information regarding the receiving notice u/s 80 C.P.C. under the Right to information Act and

he obtained the information from Appellate authority (D.D.C. Aurangabad) through Gyapank no – 315 public information dated 15. 10.2011 enclosed with letter no – 1883(law) dated 12.10.2011. the aforesaid information was sent by I/c Deputy collector, District law branch, Aurangabad. The aforesaid information has already been filed in this court by the appellant and same was admitted as additional evidence under the provision of rule 27 of order 41 allowing the petition of the appellant and accordingly the aforesaid inflammation including letter has been marked exhibit. The learned counsel has further contended that from the aforesaid letter of I/c deputy collector, legal branch, Aurangabad it is clear that prior to file the title suit plaintiff had sent the notice to Bihar government through collector, Aurangabad, and same was received in the office of collector, Aurangabad therefore Bihar government through collector, Aurangabad may be made party as defendant in the title suit as as defendant well as in the instance appeal as respondent allowing the petition.

4. The learned counsel for respondent no – 1 vehemently opposed the prayer of the plaintiff and submitted that in the suit as mentioned above plaintiff sought one of the relief is that whether suit is fit to be decide on the account of non service of notice under the provision of section 80 C.P.C. that issue was decided against the plaintiff discussing in elaborate in para- 16 of the judgement.

The learned counsel has further contended that Earlier such type of petition was filed by the plaintiff in the appellate court and same was rejected by the court of F.T.C-II. If once any issue is decided by the competent court it can not be raised again. Thus the aforesaid petition is barred by the principle of res-judicata. The learned counsel further contended that during the trial of suit appellant has been examined as PW – 13 and during the cross examination in para-16 he had stated that notices were typed in three copies and same were served to defendant no – 2,3 & 4. who are government employees and there names mentioned on title page of the suit. Therefore, no question arises to serve the notice to collector, Aurangabad. All allegations made in the petition by the plaintiff are false and concocted as such stand denied. Having considered the facts & circumstances as raised by the respondents as above, the aforesaid petition of the plaintiff may be dismissed.

5. Perused he case record. Case record reveals that the instance appeal preferred against the judgement & decree dated 30.3. 2005 & 8.4.2005 passed by the learned sub Judge-V, Aurangabad in title suit no – 286/1992 by which the aforesaid title suit was dismissed behind it reason that it was not maintainable because plaintiff had not served notice u/s 80 C.P.C. to sate of Bihar through collector , Auranganad therefore he had no got cause of action to file the instance suit against the defendants. I also perused the lower case record from which it seems that plaintiff (appellant) filed a petition on 28. 6. 2000 to call for the the receiving register regarding the

servicing notice u/s 80 of C.P.C. of the year 1992 ordinary volume-II dated 21.9.1992 vide serial no – 3226 from the office of collector, Aurangabad and same was allowed after hearing both party vide order dated 28.8. 2000 and accordingly requisition for aforementioned register was sent to the office of collector, Aurangabad on 05.9.2000 but same was not received, then on 22.9.2000 reminder letter was issued for the aforementioned register despite of that the required register not received and ultimately the title suit was disposed without receiving the aforesaid register.

5. I also perused the record of the instance appeal from which it transpires that on 25.11.2005 & 19.9.2006 petition and supplementary petition was filed on behalf of the appellant for making party of the state of Bihar through collector in the title suit as well as in the instance appeal under the provision of rule 10 of order-1 of C.P.C. and same was dismissed only on the ground that notice u/s 80 of C.P.C. was not served to the collector, Aurangabad vide order dated 29.2.2008. case record further reveals that on 13. 9. 2019 a petition was filed under the provision of rule 27 of order 41 of C.P.C. to mark exhibit the information regarding the notice under section 80 of C.P.C. sent by the appellant to the collector, Auranganad obtained under tight of information Act and was allowed hearing both the parties and according the aforesaid information was marked exhibit as Ext P-9 &P-10. Now the information regarding service of notice u/s 80 of C.P.C. to the office of collector, Aurangabad for making party of state of Bihar is on case record from which it transpires that plaintiff had served the notice to collector, Auranga for making party of Sate of Bihar. Case record further reveals that in the appellate court earlier a petition was filed on 25.11. 2005 for making party of state of Bihar through collector, Aurangabad but same was dismissed due to non available of the information in connection of service of notice u/s 80 of C.P.C vide order dated 29.2.2008 by the court of F.T.C.-II, Aurangabad. Now the aforesaid information regarding service to notice u/s 80 of C. P.C. is on case record and same has been admitted as evidence therefore principle of res- judicata will be not applicable on the petition of the appellant because principle of *res-judicata* does not apply on interlocutory order.

6. As per provision of section rule 10(2) of order-1 of C.P. C. 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 name of any party improperly joined, whether as plaintiff or defendant, be strike out and that 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 question involved in the suit be added.

7. From the arguments advanced by the learned counsel for the appellants it seems that due to non serving the notice to state of Govt through collector, Aurangabad state of Bihar could not make party as defendant in the title suit and only this score title suit was not found maintainable and ultimately same was dismissed, while notice was served in office of the collector, Aurangabad but during the trial of the title suit plaintiff(appellant) could not made available the evidence regard ing serving the notice u/s 80 of C.P.C. because the advocate who served the

notice to the office of collector of Aurangabad on behalf of the plaintiff(appellant) died and due to which document regarding serving the notice u/s 80 of C.P.C. could not be obtained by the plaintiff and in result plaintiff lost his suit, thereafter he preferred the instance appeal and during the pending the instance appeal, appellant obtained the information regarding serving notice to the collector, Aurangabad u/s 80 of C.P.C. to make the party of sate of Bihar and filed in the instance appeal with prayer to permit the appellant to file the same as additional evidence under the provision of rule -27 of order - 41 of C. P. C. and same was allowed the documents regarding serving notice u/s 80 C. P. C was admitted as evidence under the provision of the aforesaid provision after hearing both the parties vide order dated 22.11.2019. Thus from the above discussed facts and circumstances it is clear that there was no any negligence on the part of plaintiff to make the party of state of Bihar as defendants in the suit. As state of Bihar is necessary party of the suit as well as appeal and also it is necessary to make the party of the sate of Bihar for just and proper decision in the instance case.

8. Having considered the above facts and circumstances as well as in the view of the provision of rule 10(2) of order-1 of C. P. C. this court finds the state of Bihar is necessary party of the suit as well as in the instance appeal and it may be made party in the instance appeal as well in the title suit, Hence petition of the appellant is allowed and accordingly appellant to implead the name of state of Bihar through collector as defendant in memorandum of appeal as well as in the plaint of title suit as above noted.

Dictated and Corrected by

Additional District Judge-II

Aurangabad, Bihar