



2026:CGHC:35417



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP227 No. 249 of 2025**

Shri Ramchandra Swami @ Bhaghirathi Mandir Trust, Gol Bazar, Raipur Through Chief Trustee And Sarwakara, Arun Kumar Dubey, Presently Aged About 57 Years S/o Late Ravishankar Dubey, Bhagirathi Dubey Mandir, Nayapara, Gol Bazar Raipur, District - Raipur (C.G.) (Plaintiff)

... Petitioner**versus**

1 - Atmaram Khatwani S/o Late Gurumuk Das Khatwani Presently Aged About 64 Years.

2 - Smt. Rani Motwani W/o Shri Ashok Motwani, Presently Aged About 60 Years,

3 - Smt. Laxmi Gurbani W/o Shri Sunil Gurbani, Presently Aged About 58 Years,

4 - Smt. Jaya Khatwani W/o Late Narendra Khatwani, Presently Aged About 57 Years,

5 - Sunil Khatwani S/o Late Narendra Khatwani, Presently Aged About 34 Years,

Respondent No.1 to 5, R/o Telibhanda, Gali No. 05, Raipur Tahsil Raipur District - Raipur (C.G.)

6 - Amar Telwani S/o Uttamchand Telwani, Presently Aged About 62 Years R/o Phase - 2 Shri Ram Nagar Shankar Nagar Raipur (C.G.)



7 - Sonia Sharma S/o Shri Madanmohan Bhaglal Presently Aged About 46 Years Through Power Of Attorney, Pawan Sharma S/o Mandanmohan Bhaglal R/o Shanti Nagar, Raipur District - Raipur (C.G.)

8 - Nikhit Afreen, W/o Sheikh Nurisalam, Aged About 36 Years R/o Noorani Chowk Rajatalab, Raipur, Tehsil And District - Raipur (C.G.) (Proposed Defendant)

... Respondents

For Petitioner	:	Shri Shobhit Koshta, Advocate.
For Respondents	:	Ms. Swati Rani Saraf, Advocate appears on
No.1 to 4		behalf of Shri Devershi Thakur, counsel for
		respondents No.1 to 4.
For respondent	:	Shri Shikhar Bhaktiyar, Advocate.
No.6		
For respondent		Ms. Gargi Joshi, Advocate appears on behalf
No.8		of Shri Suryapratap Yuddhveer Singh,
		Advocate.

SB: Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

11/08/2026

1. At the outset, Shri Shikhar Bhaktiyar, learned counsel appearing for respondent No.6 is not pressing the I.A. No.03/2025.
2. Accordingly, I.A. No.03/2025 is dismissed as not pressed.
3. Present is writ petition under Article 227 of the Constitution of India filed by the petitioner against the impugned order dated 20/02/2025 passed by the learned First Additional Judge to the Court of First Civil Judge, Junior Division, Raipur in civil suit No.284-A/15 whereby the application filed by the petitioner



under Order 1 Rule 10 read with 151 of CPC has been rejected.

4. Learned counsel for the petitioner would submit that the petitioner is the plaintiff before the learned trial court who is prosecuting a suit for possession and damages of the land bearing khasra No.473/1 and 474/1 area 0.209 hectare situated at Shankar Nagar, Tehsil and District Raipur. He would submit that the plaintiff has filed the suit with the pleading that the defendants have encroached the 3014 sq. ft. of land of the plaintiff and during pendency of the suit, the defendants have sold the suit property who were the owner of land khasra No.472/25 which includes the encroached area of the land of the plaintiff to one Nikhat Afrin through registered sale deed dated 03/09/2024 and since the interest over the property has been transferred by the defendants No.1 and 4 to the proposed defendant, therefore the purchaser of the subject property is the necessary party in the suit. He would also submit that the learned trial court has rejected the application by saying that the land of the defendants No.1 and 4 is khasra No.472/25 whereas the subject land in the present suit is Khasra no. 473/1 and 474/1 which is quite different land and therefore the proposed defendant cannot be impleaded in the present suit. He would also submit that although the khasra number of both the lands are different but it is the same parcel of the land in which the defendants have encroached particular part of the



land of the plaintiff. If the purchaser would not be made as a party/defendant, the very purpose of filing of the suit would be defeated as decree cannot be executed against the person who is not the party to the suit. He would also submit that the proposed defendant is proper and necessary party and she be impleaded as defendant in the suit. He would further submit that irrespective of the fact that the plaintiff may or may not prove the encroachment over the subject land by the defendant Nos. 1 and 4 who subsequently alienated the property to the proposed defendant, however in view of the pleading made by the plaintiff in the plaint, the prima facie right and interest over the subject property which has been alienated in favour of the proposed defendant surfaced, therefore the impugned order passed by the learned trial court is erroneous and the proposed defendant may be permitted to be impleaded as a party defendant in the suit.

5. On the other hand, learned counsel appearing for the respective respondents opposes the submission and submitted that the land of the defendants No.1 and 4 which has been alienated in favour of the proposed defendant is entirely a different land than the subject land of the suit, therefore the learned trial court has rightly rejected the application filed by the plaintiff in which there is no error and the writ petition is liable to be dismissed.



6. I have heard learned counsel for the parties and perused the documents annexed with the petition.

7. On perusal of the copy of the plaint annexed as Annexure P-1, it transpires that the plaintiff has pleaded in para 7 of his plaint that his land khasra no.473/1 and 474/1 total admeasuring 0.028 hectare situated at Shankar Nagar, Raipur and 3014 sq.ft. of land has been encroached by the defendants. It is also the submission of the plaintiff that the encroached part of his land of khasra no.473/1 and 474/1 has been sold by defendants No.1 and 4 to the proposed defendant Smt. Nikhat Afrin vide registered sale deed 03/09/2024 Annexure P-4. Although the property of land khasra No.472/25 has been transferred in favour of the proposed defendant as shown in the sale deed but in view of the pleadings made by the plaintiff in para 7 of his plaint, he specifically alleged that there is an encroachment by the defendants over his land. Whether or not the land purchased by the proposed defendant is the part of the land of khasra no.473/1 and 474/1, the same is to be proved by the plaintiff during the trial, however at this stage, it cannot be said that there is no interest claimed by the plaintiff against the defendant or the subsequent purchaser of the land who purchased the land from defendants No.1 and 4 through registered sale deed dated 03/09/2024.

8. In the case of **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited**



and others reported in **(2010) 7 SCC 417**, Hon'ble Supreme

Court has held thus in para 13:-

“13.The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code” for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

“10.(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.”

9. In view of the aforesaid facts and circumstances of the present case, pleadings made by the plaintiff in the plaint and documents annexed thereto and also in view of the judgment passed by Hon'ble Supreme Court in the case of **Mumbai International Airport Private Limited** (supra), this Court is of



the considered opinion that the proposed defendant Nikhat Afrin is proper and necessary party to be impleaded in the suit.

10. Accordingly, the impugned order dated 20/02/2025 with respect to the rejection of the application under Order 1 Rule 10 read with 151 of CPC is hereby set aside. The application filed by the petitioner/plaintiff under Order 1 Rule 10 read with 151 of CPC is allowed and the learned trial court is directed to permit the plaintiff to implead the proposed defendant Nikhat Afrin as the defendant in the suit and thereafter issue notice to the newly added defendant and to provide opportunity of filing written statement and all other defence and permit them to defend their case in the trial and decide the suit in accordance with law on its own merits.
11. Accordingly, the writ petition is allowed to the extent indicated herein above.
12. Interim order, if any, stands vacated.

Sd/-
(Ravindra Kumar Agrawal)
Judge