

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19136 of 2013

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1. Srimati Sushila Devi wife of Sri Uday Pratap Singh.
 2. Uday Pratap Singh, son of late Ram Govind Prasad Singh.
 3. Lakshmi Pratap Singh, son of Sri Uday Pratap Singh.
 4. Srimati Lalmuni Devi, wife of Bida Kumar Singh.
 5. Rita Devi, wife of Bidhesh Kumar Singh, all resident of village and p.o. Karma Bhagwan, P.S. and District-Aurangabad (Bihar.)

.... Petitioner/s

Versus

1. Shaligram Singh son of late Kauleshwar Singh.
2. Jai Ishwar Singh.
3. Rajendra Singh.
4. Kasmata Singh.
5. Lalita Singh, all sons of late Brij Mohan Singh all residents of village-Parsa, P.O. Karma Bhagwan, p.S. Aurangabad (M), District-Aurangabad (Bihar).
6. Ashok Kumar Singh @ Baiju Singh.
7. Gopal Singh.
8. Ramjee Singh, all sons of Shaligram Singh.
9. Santosh Kumar Singh.
10. Nitesh Kumar Singh.
11. Ritesh Kumar Singh, all sons of Ashok Kumar Singh.
12. Anant Mohan Singh.
13. Chunmun Kumar Singh, both sons of Gopal Singh.
14. Amritraj Singh @ Banti son of Ramjee Singh.
15. Pintu Kumar Singh, son of Rajendra Singh.
16. Dablu Kumar Singh.
17. Bablu Kumar Singh, both sons of Kamta Singh.
18. Mantoo Kumar Singh.
19. Rinku Kumar Singh, both sons of Jai Ishwar Singh.
20. Bhola Singh, son of Lalita Singh, all residents of village-Parsa, P.O. Karma Bhagwan P.S. Aurangabad Muffasil, District-Aurangabad (Bihar).
21. Sudhir Singh.
22. Satish Singh, both sons of late Ram Ekbal Singh and Bimla Devi, both residents of village-Tona, P.O. Simra, Pargana-Kutumba, P.S. Nabinagar

(Mali), District-Aurangabad Bihar at present resident of village-Dhanpuri,
Chip House Colony P.S. Amlal, District-Shahdol (M.P.).

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. BINOD KUMAR SINGH
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-01-2015

Heard Mr. Binod Kumar Singh, the learned counsel for the
petitioners and the Mr. Bajrangi Lal, the learned counsel for the
respondents.

Grieved by the order dated 13.08.2013 refusing the prayer
for amendment in the plaint, the plaintiff-petitioners has filed this writ
application under Article 227 of the Constitution of India assailing the
legality of the said order. The suit has been filed by the plaintiffs for
grant of permanent injunction restraining the defendants from
interfering with the possession of the plaintiffs over the suit land. The
claim of the plaintiffs as disclosed from the submissions by the
learned counsel for the petitioners is on the basis of the purchase from
Bimla Devi who according to the plaintiffs got the property from
Janardan Singh by gift deed. The amendment has been sought for
adding the fact in the plaint that the plots which have been purchased
by the plaintiffs have been amalgamated with other plots by the
defendants by breaking the ridges.



From the submissions made by Mr. Lal, the learned counsel for the respondents, it is transparent that the defendants have disputed the title of the vendor of the plaintiffs on the assertion that the gift deed through which the vendor of the plaintiffs acquired the suit property was itself not legal and valid. The fact that earlier a suit has been filed by the donor of the plaintiffs' vendor questioning the validity of the gift deed has not been disputed and the fact has not been disputed that after the dismissal of the said suit the appeal is pending against the judgment and decree of the said suit.

The learned counsel for the petitioners has submitted that the amendments which have been sought by the plaintiffs are in the nature of the subsequent event as the defendants have broken the ridges of the suit plots after filing of the suit. The perusal of the impugned order demonstrates that the learned court below has rejected the prayer of the plaintiffs for amendment on the ground that no date has been mentioned by the plaintiffs regarding breaking of the ridges by the defendants and on that basis the learned court below has not accepted the case of the plaintiffs that amendment has been sought because of an event occurring subsequent to the filing of the suit. The learned court below, however, has recorded in the impugned order that the issues were not framed in the suit when the amendment was prayed by the plaintiffs.

After considering the submissions by the learned counsel for the parties and the facts of the case, it is limpid that the plaintiffs have sought the amendment of the plaint at the initial stage of the suit when the issues admittedly were not framed. The provision of Order VI Rule 17 clearly postulates that all such amendments which are necessary for determination of the real controversy in the suit should be allowed. Without going into the merits of the rival claims of the parties as to whether the ridges were broken prior to the filing of the suit or after the filing of the suit, the fact is apparent that the plaintiffs are claiming the decree for permanent injunction on the basis of his title and possession over the suit land acquired through the sale deed. It is the case of the defendants, as mentioned in the impugned order that there is no separate existence of the suit land and all the lands of the defendants have stood amalgamated since long back. It is demonstrable therefore that the existence of the suit land as separate entity on the date of the gift deed and subsequent sale deed would be the crucial controversy between the parties. It is also not in dispute that the proposed amendment has been sought at the initial stage of the suit and that too before the framing of the issues. This Court is not persuaded to align with the submission on behalf of the respondents that the proposed amendment would change the nature and scope of the suit. From the perusal of the order of the learned court below, it is

apparent that the learned court below has refused the prayer for amendment mainly on the basis that no date or year of the breaking ridges by the defendants has been mentioned.

In the backdrop of the aforesaid facts and reasons, this Court is inclined to allow the writ application and quash the impugned order refusing the prayer for amendment in the plaint by the plaintiffs. The defendants shall have the right to file additional written statement in view of the fact that the plaintiffs has been allowed to amend the plaint.

This writ application is, accordingly, allowed with the aforesaid observations and directions.

(V. Nath, J)

Devendra/-

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