

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.684 of 2011

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1. Md.Kamil Mian S/o Late Md. Quitab Mian Vill-Champapur, P.S-Shikarpur, Dist-Champaran

.... Petitioner

Versus

1. Md.Nek Mohammad Mian son of Late Md. Abdusalim Mian Vill-Champapur,P.S-Shikarpur, Dist-West Champaran
2. Md. Nazam Mian S/o Md. Nek Mohammad Mian R/o Vill-Champapur,P.S-Shikarpur, Dist-West Champaran
3. Md. Amjad Mian S/o Md. Nek Mohammad Mian R/o Vill-Champapur,P.S-Shikarpur, Dist-West Champaran
4. Md. Azad Mian S/o Md. Nek Mohammad Mian R/o Vill-Champapur,P.S-Shikarpur, Dist-West Champaran

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi

For the Respondent/s : Mr. Chandra Mohan Jha

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

8 27-08-2015 Heard Mr. Siya Ram Shahi for the petitioner and Mr. Chandra Mohan Jha for the respondents.

The plaintiff of Title suit no. 102 of 2003 for declaration of right, title and interest over the suit property has filed the present writ application aggrieved by the order dated 18.2.2010 passed by the learned Munsif, Bettiah, West Champaran whereby the application (Annexure-1) seeking amendment in the plaint has been considered and rejected.

The plaintiff claims to have purchased the land from three sons of Atahar Hussain Khan (deceased). None of them was

made party to the suit. By way of amendment the sons of Atahar Hussain Khan were prayed to be made the party. Some other amendments, were also prayed which appear to change the nature of the suit as the plaintiff wanted to assail the sale deed(s). The objection of the defendant-respondent was accepted and the application was rejected.

Mr. Shahi submits that impleadment of some defendant(s) in the suit was necessary for resolution of the real controversy. An application for such impleadment can be filed under relevant provision of the Code of Civil Procedure (for short 'the Code') whereafter the Court should consider the said application. Even otherwise the Court ought to have allowed the prayer of the petitioner to implead some defendants in the suit if the same does not change the nature of the suit for otherwise cause any serious prejudice to the party.

Counsel for the defendants-respondents, on the other hand, argued that the amendment seeking declaration of certain sale deed(s) could not have been allowed since the same would change the nature of the suit. The trial court has correctly appreciated this aspect of the matter and rejected the prayer of the plaintiff.

Having heard the parties and on going through the

materials on record including the reasons assigned in the impugned order, it appears that the prayer of the plaintiff for addition of parties was rejected on amongst the premise that by seeking amendment such impleadment cannot be allowed.

The other prayer of the plaintiff for incorporating some relief in the suit to challenge the sale deeds has rightly been disallowed holding that the same would change the nature of the suit. This Court, therefore, does not feel inclined to interfere with the order. However, the petitioner would be at liberty to file an application invoking relevant provisions of the Code for impleadment of some persons as defendant(s) in the suit, which, if at all filed, shall be considered and disposed of in accordance with law without being prejudiced by the present order.

(Kishore Kumar Mandal, J)

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