

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11408 of 2013

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1. Jata Shankar Tiwari.
 2. Baldeo Tiwari.
 3. Sheoji Tiwari all Sons Of Late Mahendra Tiwari.
 4. Ram Chandra Rai @ Ram Chandra Prasad Rai Son Of Late Ganesh Rai.
 5. Narayan Gupta @ Subh Narayan Sah Son Of Late Nakched Gupta all
Resident of Village- Pathkhauli, P.S. - Kateya, District- Gopalganj.
- Petitioner/s

Versus

1. Parshuram Pandey Son of Late Mangal Pandey, Resident of Village-
Pathkhauli, Post- Baghi Bazar, P.S. - Kateya, District- Gopalganj.
2. Vinay Tiwary Son of Paras Tiwari, Resident of Village- Dharm Makta,
Post- Baghi Bazar, P.S. - Kateya, District- Gopalganj.
3. Deputy Collector Land Reforms, Hathua, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

2 13-07-2015 Heard the learned counsel appearing on behalf of the

petitioners who has made submissions on the merits of the main

writ application as well.

The defendants are the petitioners in this application
under Article 227 of the Constitution of India assailing the order
passed by the learned court below refusing the prayer for
amending the written statement.

The learned counsel for the petitioners has accepted
that the evidence of the plaintiffs has already been closed and the
evidence of the defendant-petitioners is at the verge of the
conclusion. This fact has also been mentioned by the learned court



below in the impugned order. It is evident that at this stage, the defendants have come out with an amendment in the written statement seeking to introduce the case with regard to the entitlement and possession of Mahrajo Kuer and her descendants over the suit property by virtue of the compromise decree passed in an earlier suit. From the impugned order, it transpires that the learned court below has taken into notice the paragraph-9 of the written statement where the defendants have made the averment that the said Mahrajo Kuer was not in possession over the entire property. The prayer for amendment by the defendant seeking to introduce a new material fact inconsistent with the earlier stand and that too at the stage after the closure of the evidence of the plaintiff and leading his own evidence to a great extent, cannot be accepted to be bonafide.

The learned counsel for the petitioners has fairly accepted that the defendants had the knowledge of the fact proposed to be introduced by amendment but could not communicate the same to his counsel. This stand rules out the exercise of due diligence by the defendants.

The learned court below after considering the entire facts and circumstances has refused to exercise its discretion in favour of the defendants in view of the proviso to Order VI Rule

17 C.P.C. This Court has not been persuaded to find illegality or error in any manner in the impugned order.

The writ application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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