

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2820 of 2013

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Fulchand Das S/O Puran Das Resident Of Village - Gwalpara, P.O.
Gwalpara, Police Station - Udakishunganj, District - Madhepura

.... Petitioner.

Versus

1. Parmeshwar Tatma S/O Late Nandkeshwar Tatma Resident Of Village -
Gwalpara, P.O. Gwalpara, Police Station - Udakishunganj, District –
Madhepura.
2. Dhirendra Tatma Son Of Upendra Tatma Resident Of Village -
Gwalpara, P.O. Gwalpara, Police Station - Udakishunganj, District –
Madhepura.
3. Badial Tatma Son Of Upendra Tatma Resident Of Village - Gwalpara,
P.O. Gwalpara, Police Station - Udakishunganj, District – Madhepura.
4. Shanichar Tatma S/O Late Jagdish Tatma Resident Of Village -
Gwalpara, P.O. Gwalpara, Police Station - Udakishunganj, District –
Madhepura.

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

3 07-12-2015 Heard Mr. Chaudhary Shyam Nandan, the

learned counsel appearing on behalf of the petitioner.

Questioning the legal sustainability of the

impugned order by which the prayer for amendment of the

plaintiff-appellant has been rejected by the appellate court at the

appellate stage, the application under Article 227 of the

Constitution of India is filed.

The plaintiff's suit for declaration of title and

recovery of possession was dismissed. Thereafter the plaintiff filed



the appeal and before the appellate court the petition was filed by the plaintiff for amendment in the plaint by substituting the description of the suit property. The precise prayer of the plaintiff was that the description of the suit property as earlier made in the plaint mentioning it to be located towards east should be deleted and in its place it should be amended to be located towards west. The learned court below after considering the facts and circumstances of the case as well as submissions of the parties has come to the conclusion that the amendment is not in accordance with the spirit of Order 6 Rule 17 C.P.C. and consequently declined the prayer.

The learned counsel for the petitioner has submitted that the amendment can be allowed at any stage even up to the Hon'ble Apex Court and therefore in the interest of justice the learned court below should have allowed the prayer for amendment. It has, however, been accepted that no boundary has been mentioned in the amendment petition with regard to the proposed amended suit property.

After perusal of the impugned order and the records of the case and considering the submissions, this Court finds that by the proposed amendment the description of entire suit property has been sought to be changed by the plaintiff at the

appellate stage. There is no also explanation as to why this amendment was not sought during the course of hearing of the suit. It has also not been pointed out that during the course of deposition also the plaintiff has made any such discovery of the wrong description of the suit plot in the plaint. No fact has also been stated establishing due diligence on the part of the plaintiff-petitioner. The learned court below, therefore, has committed no error of jurisdiction or illegality in refusing the prayer for amendment at the appellate stage. In this backdrop, this Court is not inclined to interdict the impugned order.

The writ application is, accordingly, dismissed.

(V. Nath, J)

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