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Versus

**-Defendant/Respondent 2<sup>nd</sup> set.**

For the Petitioner/s : Mr. Ranjan Kr.Dubey  
For the Respondent/s : Mr. Sanjay Kr.Pandey

7 29-01-2015

Heard the learned counsel for the petitioners.

The learned counsel for the plaintiff-respondents has also been heard.

The learned counsel for the plaintiff-respondents has submitted that although the Vakalatnama has been filed on behalf of the respondent nos.1 to 6 and the Vakalatnama has not been



filed on behalf of the remaining three respondents i.e. respondent nos. 7 to 9 but as they are married daughters of the family of respondent nos. 1 to 6, therefore, no separate notice is required to be issued to them as their interest is represented by the respondent nos.1 to 6 The learned counsel for the petitioners has stated that in the present matter no notice is required to be issued to respondent no.10- Collector, Gopalganj, District-Gopalganj and respondent no.11- C.O., Kateya, District-Gopalganj.

Grieved by the order rejecting the prayer of the defendant-petitioners to file additional written statement, the present writ application has been filed for quashing the order dated 12.01.2008 by learned Additional Munsif (A.M.) IV, Gopalganj in T.S.No.202/97. The suit has been filed by the plaintiff praying for declaration of title and possession over the suit land and for further declaration that the order of the Collector, Gopalganj and C.O. Kateya, Gopalganj are illegal and without jurisdiction and the government has no right to distribute the disputed land.

It is not in dispute that the plaintiffs had prayed for amendment in the plaint which was allowed after contest from the defendants-petitioners on 11.11.2003. The suit, thereafter, proceeded for hearing. The parties led their evidence and thereafter the suit was posted for argument. At that stage a petition



was filed by the defendant-petitioners seeking permission to file additional written statement on the ground that the senior lawyer of the defendant-petitioners had no knowledge of the amendment in the plaint at the instance of the plaintiffs in the year 2003 and the said fact became known only during the course of argument. The assertion of the defendant and prayer for permission to file additional written statement were contested by the plaintiffs who in their rejoinder stated that the same senior lawyer appeared on behalf of the defendants while opposing the prayer for amendment in the plaint, and therefore, the assertion that the said lawyer had no knowledge of the amendment was false. The trial court by the impugned order dated 12.01.2008 has rejected the petition for permission to file additional written statement as prayed by the defendant-petitioners.

Mr Rakesh Chandra, the learned counsel for the petitioners has submitted that the defendant petitioners do not intend to lead any more evidence and they only want to file the additional written statement in response to the amendments made by the plaintiffs in the plaint in order to complete the pleading. It has also been submitted that the defendants have led their evidence on all the points but because of the lack of knowledge of the amendment, the additional written statement could not be filed

earlier.

Per contra, the learned counsel for the plaintiff-respondents has submitted that the explanation furnished by the defendants of lack of knowledge of the amendment is not fit to be believed in view of the fact that the same lawyer appeared even at the time of hearing on the issue of amendment. It has, however, also pointed out by the learned counsel that the defendants have tacitly led their evidence on the facts introduced by the plaintiffs by way of amendment and they want only to cure the lacuna which remained there in the pleading for want of additional written statement. The learned counsel has also pointed out that the argument is complete and the suit has been posted for judgment which could not be delivered because of the objection raised by the defendants on the ground of pendency of this writ application.

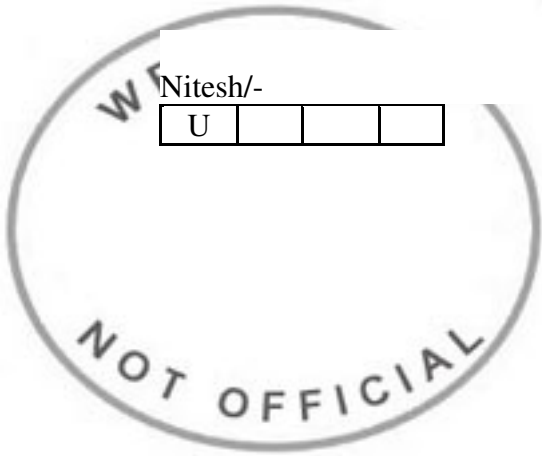
After careful consideration of the facts and the submissions on behalf of the parties, it is limpid that the plaintiff has made amendments in the plaint in the year 2003 by which certain facts were introduced in support of the relief prayed by the plaintiffs. In view of the submission on behalf of the defendant-petitioners that no more evidence shall be led on their behalf even after the additional written statement is accepted on record



and in view of the submission on behalf of the plaintiff-respondents that the defendants have already tacitly led evidence to meet the facts introduced by the plaintiff by way of additional written statement, it appears just and proper that the equity should be balanced as the suit is pending since 1997, and the defendants be permitted to file additional written statement as prayed subject to payment of cost and in view of their categorical stand that no further evidence on behalf of the defendants shall be led thereafter. The learned counsel for the plaintiff-respondents has also taken up the categorical stand that the plaintiffs also do not intend to lead any evidence now.

The writ application is accordingly allowed. The order dated 12.01.2008 is quashed and the additional written statement filed by the defendant-petitioners is directed to be taken on record with the condition that no further evidence shall be led by the defendant-petitioners or the plaintiff-respondents as stated on their behalf. This order shall be further subject to the condition of payment of a cost of Rs.20,000/- by the defendants to the plaintiffs within a period of four weeks and filing the receipt showing the payment before the learned court below. The learned court below is directed to dispose of the suit

thereafter expeditiously in accordance with law.



(V. Nath, J)