

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2323 of 2011

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Sudhir Kumar Sil son of Late Dr. Narendra Nath Sil resident of village
Bochahan P.S. Bochahan, Dist-Muzaffarpur.

.... Petitioner

Versus

1. Manju Shree wife of late Sishir Kumar Sil.
2. Alok Kumar S/o of late Sishir Kumar Sil
3. Ashok Kumar S/o of late Sishir Kumar Sil
4. Mostt. Mala Sil wife of late Dularchand Sil, daughter of Sudhir kumar Sil.

All residents of village Bochahan P.S. Bochahan Dist. Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : Mr.Yogendra Prasad Sinha, Advocate.

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 14-08-2015 Heard Mr.Yogendra Prasad Sinha in support of the

application. No one has appeared on behalf of the defendant-

respondent in spite of notice.

The plaintiff of Partition Suit No. 69 of 1986 as well
as appellant of Partition Appeal No. 24 of 2003 has filed the writ
application to assail the order dated 28.8.2010 passed by the
appellate court in Partition Appeal No. 24 of 2003 whereby
amendment in the plaint sought by the plaintiff-appellant was
considered and rejected primarily on the ground that the same
was sought at a belated stage.

Relevant facts necessary for appreciation of the
grievance of the petitioner may be noticed:-

The parties to the suit belong to common ancestor.

Narendra Nath Sil was the father of both the parties. He died leaving behind his widow Lawanay Prabha Sil and the two sons, namely, Sudhir Kumar Sil and Sisir Kumar Sil. Plaintiff belongs to the family of Sudhir Kumar Sil whereas the defendants are widow and sons of Sisir Kumar Sil. The suit was filed for partition. Certain lands and the properties of Narendra Nath Sil acquired in Kolkatta were also made the subject matter of the suit. The defendants appeared in the Suit and took a plea that the entire land/property of the Narendra Nath Sil located in Mohalla- Sahantoshpur Green Avenue, Yadavpur, Kolkatta was/were gifted by the mother in favour of Sisir Kumar Sil. Such deed of gift was made on 18.9.1981. The plaintiff was not aware of the existence of such deed of gift. In such circumstances, an application was filed for amendment in the plaint to question the legality of the deed of gift. The same was considered and rejected by the trial court. Aggrieved thereby a civil revision application was filed in this court vide C.R. No. 1067 of 2002 which, however, remained pending in this Court. No stay appears to have been granted therein. By the time, the Civil Revision application was taken up for consideration and final disposal the suit was disposed of. The Civil Revision application was

considered on 2.11.2003 observing as under:-

“It is stated by learned counsel for the petitioner that the suit itself has been disposed of.

In that view of the matter, this revision application has become infructuous and it is disposed of as such. However, it will be open for the petitioner to challenge the impugned order at the appellate stage, if occasion so arises.”

In the light of the said liberty the petitioner filed an application for amendment in the plaint before the appellate court which was rejected on the ground that the same was filed belatedly. The application for condoning the delay filed along with the application was also considered and rejected.

The contention of petitioner is that for doing complete justice between the parties the amendment sought in the plaint ought to have been allowed which does not change the nature of the suit which remains a partition suit. The appellate court, while rejecting the said application, completely failed to consider one of the avowed reasons for providing such power under Order 6 Rule 17 CPC i.e. to guard against multiplicity of litigation between the same parties. The plaintiff-appellant was not aware of such deed of gift before the written statement was filed. The ends of justice shall be subserved if the petition for the amendment was allowed. Non grant thereof has, in fact,

occasioned a complete failure of justice.

Consequently, the application is allowed. The order dated 28.8.2010 is set aside. The appellate court shall allow the petition filed for amendment and thereafter proceed for disposal of the appeal in accordance with law.

(Kishore Kumar Mandal, J)

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