

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14886 of 2014

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1. Most. Shanti Devi wife of Late Janardan Yadav
 2. Pankaj Kumar @ Rayji Son of Late Janardan Yadav Both are resident of village - Afzalpur Tola Mohanpur, Police Station Banma Itahri, District - Saharsa

.... Petitioner/s

Versus

1. Ram Sharan Yadav son of Late Dewan Yadav
2. Parmanand Yadav @ Baua Yadav son of Ram Sharam Yadav
3. Laltu Yadav
4. Raju Yadav
5. Munna Yadav All are minor sons of Ram Sharan Yadav and are under the guardianship of their father and well wisher Ram Sharan Yadav All are resident of village - Afzalpur Tola Mohanpur, Police Station Banma Itahri, District - Saharsa
6. Smt. Parita Devi daughter of Late Dewan Mandal Wife of Yogendra Yadav resident of village - Jagbani, P.S. Sinheshwar, District - Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sudhir Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

3 01-10-2015

Heard the learned counsel for the petitioners.

Questioning the legal acceptability of the impugned order declining the prayer for amendment in the plaint by the plaintiffs, the present application under Article 227 of the Constitution of India has been filed.

The suit has been filed for partition in the year 1998.



It is also evident and not disputed on behalf of the petitioners that the suit has now been posted for argument. At this stage, the plaintiffs filed the petition praying for amendment in the plaint by changing the numbers of some plots and khatas mentioned in the schedule of the plaint as suit property. The defendants, in their rejoinder, took specific stand that in the written statement they had already raised the objection with regard to the wrong mentioning of khatas and plots in the suit but in spite of that the plaintiffs proceeded to pursue the suit without taking steps for appropriate correction. It was further case of the defendants that at the stage of argument of the suit the said prayer for amendment could not have been allowed.

The learned counsel for the petitioners has submitted that the proposed amendments are only formal in nature and relates to the petty mistakes by typists in mentioning the number of plots and number of khatas. It has been emphasized that the plaintiffs were ignorant of those facts and in fact one of the plaintiffs is a widow and another is her son. It has been canvassed that in these facts and circumstances, the knowledge of the correct numbers of plots and khatas subject matter of the suit could not have been expected from the plaintiffs. The learned counsel has also argued that the learned court below should have appreciated

the aforesaid aspect and should have approached the matter liberally.

After perusal of the impugned judgment and considering the submissions, it manifest that the suit has been filed in the 1998 and it is at the stage of argument. From the rejoinder filed by the defendants which has been annexed with the writ application, it is evident that the defendants have claimed to have already raised objection in the written statement with regard to the wrong mention of the number of plots and number khatahs in the plaint. This fact has not been denied by the petitioners. When this fact is taken into consideration, the absence of due diligence on the part of the petitioners is explicit. The submission on behalf of the petitioners that they are deprived and ignorant persons could not be sufficient to deny the right which has accrued to the defendants. This Court therefore, does not find any illegality or error of jurisdiction in the impugned order justifying interdiction under Article 227 of the Constitution of India.

The writ application is accordingly, dismissed. However, the petitioner shall be at liberty to question the legality of the impugned order as may be permissible under Section 105 C.P.C.

Devendra/-

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(V. Nath, J)