

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.612 of 2014

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Dhirajlal Dalichand Mehta

.... Petitioner/s

Versus

Sharad Kumar Mehta

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Maijorwar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 07-12-2015 Heard learned counsel for the petitioner and learned counsel
for the respondent.

By the impugned order dated 10.09.2013 passed by Sub-Judge-IV, Patna, in Title Partition Suit No. 315 of 2011, the court below allowed the amendment application filed by the plaintiff-respondent under Order 6 Rule 17 CPC.

Admittedly, on the date of the impugned order, the evidence was not started. There is no averment in the application to the effect that the evidence of the plaintiff has been closed. The Hon'ble Supreme Court in the case of Rajkumar Gurawara –v- S.K. Sarwagi & Co.(P) Ltd. reported in (2008)14 SCC 364 has held that-

“...a pre trial amendment can be allowed liberally as the opposite party would not be prejudiced because he would have an opportunity of meeting the amendment sought to be made. However, in case of amendments after the commencement of

trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise.”

In the present case the evidence has not been closed. It further appears that subsequently during the pendency of the suit the deed of gift was executed in favour of defendant no.4. Therefore, the application was filed challenging the deed of gift and for adding so called donee as a party, which has been allowed by the court below.

In view of the above, I do not find any merit to interfere with the impugned order. Accordingly, this application is dismissed.

(Mungeshwar Sahoo, J)

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