

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20051 of 2012

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VED PRAKASH CHAUDHARY @ VED PRAKASH, SON OF RAMESH CHANDRA CHAUDHARY, RESIDENT OF MOHALLA-KATRA AT PRESENT RESIDING AT MOHALLA RAJENDRA CHOWK POKHARA, P.S.-HAJIPUR, DISTRICT-VAISHALI.

.... PETITIONER/S

VERSUS

1. TULSI DEVI, WIFE OF LATE ISHWAR CHANDRA CHAUDHARY.
2. RANI DEVI, DAUGHTER OF LATE ISHWAR CHANDRA CHAUDHARY.
3. SONA DEVI, DAUGHTER OF ISHWAR CHANDRA CHAUDHARY.

ALL 1 TO 3 ARE RESIDENTS OF MOHALLA KATRA TOWN AND P.S. HAJIPUR DISTRICT VAISHALI.

4. RAMESH CHANDRA CHAUDHARY SON OF LATE BHARAT CHAUDHARY
5. PREM CHANDRA CHAUDHARY SON OF LATE BHARAT CHAUDHARY
6. BADRI NATH CHAUDHARY SON OF RAMESH CHANDRA CHAUDHARY.
7. OM PRAKASH CHAUDHARY, SON OF RAMESH CHANDRA CHAUDHARY
8. GHOSH CHAUDHARY ALDIA SUBHASH CHAUDHARY SON OF RAMESH CHANDRA CHAUDHARY
9. SANJAY CHAUDHARY
10. MRITUNJAY CHAUDHARY SON OF PREM NARAYAN CHAUDHARY

ALL RESIDENTS OF MOHALLA KATRA AT PRESENT RESIDING AT RAJENDRA CHOWK, P.S.-HAJIPUR, DISTRICT-VAISHALI.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Devendra Kumar Sinha, Sr. Adv.
Mr. Bajarangi Lal, Adv.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

8 21-12-2015 Heard learned counsel for the petitioner. Learned counsel for the respondents in spite of appearance, is not present. Gone through the order impugned.

From perusal of the order impugned, it is evident that learned lower court had not considered the amendment on its merit

rather rejected the petition in the background of new amendment having incorporated by way of 2002 amendment whereunder amendment has been forbidden in normal phenomena once the trial is taken up. The suit happens to be of the year 1972 against which judgment and decree instant miscellaneous case has been filed in the year 2001 and on account thereof, the amendment provisions of the CPC is not at all found attracted as has been held by the Hon'ble Apex Court successively more particularly in *(2007) 1 SCC 765, (2009) 12 SCC 324, (2015) 4 SCC 33*.

That being so, the order impugned is set aside. Petition is allowed. Matter is remitted back to the learned lower court for reconsideration.

(Aditya Kumar Trivedi, J)

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