

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3270 of 2013

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1. Parwati Devi Wife Of Brij Kishore Kazi Residence Of Village - Raibairiya, P.O. - Harnataur, P.S. - Laukariya, District - West Champaran (Bihar)
 2. Sudarsan Kazi S/O Brij Kishore Kazi Residence Of Village - Raibairiya, P.O. - Harnataur, P.S. - Laukariya, District - West Champaran (Bihar)
 3. Mukesh Kazi S/O Brij Kishore Kazi Residence Of Village - Raibairiya, P.O. - Harnataur, P.S. - Laukariya, District - West Champaran (Bihar)

.... Petitioner/s

Versus

1. Harihar Kazi S/O Hira Kazi Residence Village - Kerai, P.O. & P.S. - Naurangiya, District - West Champaran
2. Lilawati Devi W/O Harihar Kazi Residence Village - Kerai, P.O. & P.S. - Naurangiya, District - West Champaran
3. Mahesh Kazi S/O Harihar Kazi Residence Village - Kerai, P.O. & P.S. - Naurangiya, District - West Champaran
4. Munkesh Kazi S/O Harihar Kazi Residence Village - Kerai, P.O. & P.S. - Naurangiya, District - West Champaran
5. Usha Devi W/O Vijay Kumar Resident Of Village - Gharauli, P.O. - Sidhaw, P.S. - Naurangiya, District - West Champaran
6. Krishna Kazi S/O Late Hira Kazi Residence Of Village - Kerai P.O. Laukariya P.S. Laukariya, District - West Champaran
7. Devanti Devi W/O Krishna Kazi Residence Of Village - Kerai P.O. Laukariya P.S. Laukariya, District - West Champaran
8. Sadhana Kumari D/O Krishna Kazi Residence Of Village - Kerai P.O. Laukariya P.S. Laukariya, District - West Champaran
9. Aradhana Kumari D/O Krishna Kazi Residence Of Village - Kerai P.O. Laukariya P.S. Laukariya, District - West Champaran
10. Sudhanshu Kumar S/O Krishna Kazi Residence Of Village - Kerai P.O. Laukariya P.S. Laukariya, District - West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suresh Prasad Sharma, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-12-2015

Heard learned counsel for the petitioners as well as
learned counsel for the respondents.

Assailing the impugned order whereby the prayer of the

plaintiffs for amendment in the plaint has been declined, the present application under Article 227 of the Constitution of India has been filed.

The defendants filed their written statement on 08.07.2010 wherein they had made statement with regard to the deed of gift dated 11.01.1982 and also made their claim on that basis. The issues were framed on 08.01.2011. It was only on 13.06.2012 that the present amendment petition was filed by the plaintiffs seeking amendment adding some averments in the plaint and also the relief with regard to the said gift dated 11.01.1982 as *void ab initio*, forged and fabricated documents. The learned Court below by impugned order had come to the finding that the amendment would change the nature and scope of the suit and therefore, has rejected the prayer.

After considering the submissions by learned counsel for the parties and on perusal of the records it is manifest that the suit has been filed for partition of the suit properties. The deed of gift with regard to which the amendment has also been sought for by the plaintiffs has also been relied upon by the defendants in the written statement as the basis of their claim over the suit land. Though the written statement was filed in the year 2010 but the prayer for amendment has been made in the year 2012. It is however, transparent that the claim on the basis of the said gift deed by the defendant has

been made in the suit. It is well settled that Order 6 Rule 17 CPC enjoins the Court to allow all such amendments which are necessary for adjudicating all the disputes between the parties.

In the present case also declining the adjudication on the gift deed which has been set up by the defendants as also one of the grounds of their claim would only lead to multiplicity of the suit/proceedings and would defeat that purpose of the provision of order 6 Rule 17 CPC. It is also apparent from the impugned order that the evidence of the parties has not started as yet. However, the prayer for amendment has been made by the plaintiffs belatedly and the defendants deserve to be compensated by cost.

As such, the writ application is allowed, the impugned order is set aside and the prayer for amendment as made by the plaintiffs is allowed subject to payment of cost of Rs. 10,000/- to the respondents no. 1 to 7. The plaintiff must pay the cost to the defendants within a period of eight weeks from the date of receipt/production of a copy of this order in the Court below and deposit the receipt in the Court.

(V. Nath, J)

Prakash/-

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