

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3074 of 2013

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Dr.Ram Prakash Gupta S/O Late Ayodhya Prasad Resident Of Mohalla-
Loharpatti, Police Station- Motihari Town, District- East Champaran.

.... Petitioner/s

Versus

1. Naga Singh S/O Late Sadhu Singh Resident Of Village- Nawada, Police
Station- Kotwah, P.O- Macharganwa, District- East Champaran.
2. Darshan Dubey S/O Late Indrashan Dubey Resident Of Village-
Madhubani Dubey Tola, Police Station- Sangrampur,P.O- Madhubani,
Via- Daryapur, District- East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Khalid Ahsan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

6 22-12-2015 Heard Mr. Raghib Ahsan, the learned senior counsel
for the petitioner and the learned counsel for the respondent no. 1.

It has been submitted on behalf of the petitioner that
the respondent no. 1 is the only contesting defendant in the suit.

Earlier, the notice was issued in this writ application
to the respondents and the respondent no. 1 is represented by his
counsel when the matter has been taken up.

Calling in question the impugned order refusing the
prayer of the plaintiff-petitioner for amendment in the plaint, the
present application under Article 227 of the Constitution of India
has been filed.



From the copy of the plaint (Annexure-2), it transpires that the plaintiff has filed the suit with averment that the property mentioned in schedule-I of the plaint was purchased by Radhan Dubey and defendant 2nd set Darshan Dubey by sale deed dated 30.10.1945. It has been further averred that later on Radhan Dubey and defendant 2nd set amicably partitioned the purchased property in which the area described in Schedule-II of the plaint was allotted to the share of the defendant 2nd set and the area mentioned in Schedule-III of the plaint was allotted to the share of Radhan Dubey. The plaintiff has claimed to have purchased the share of Radhan Dubey by sale deed dated 18.07.1967 and has stated that the defendant 2nd set had also sold the area in his share (schedule-II) to different persons. It has, however, been the case of the plaintiff that the defendant 1st set has collusively got executed the sale deed dated 18.10.2008 in his favour for the properties (schedule-V) which are part of the properties (schedule-IV) of the plaintiff and in this backdrop, the plaintiffs has sought the relief for declaration that the sale deed dated 18.10.2008 executed by the defendant 2nd set in favour of defendant 1st set are forged, fabricated and showee document and the relief for its cancellation has also been made.

During the pendency of the suit, the plaintiff filed a

petition seeking altogether 13 amendments in the plaint. By the impugned order, the learned court below has all the amendments accept the amendment No. Kha.

It appears from the amendment petition (Annexure-3) that by the amendment No. Kha, the plaintiff has sought to delete the word 'algai' (separate status) and substitute it by the word 'izmail' (joint) and in the first line of paragraph no. 2 of the plaint and similarly in 5th line of the same paragraph, the plaintiff has sought to insert the word 'Baisakh san 1950' as the year of the partition between Radhan Dubey and defendant 2nd set.

It has been submitted by the learned senior counsel for the petitioner that the amendments have been sought by the plaintiff at the stage in the suit when no written statement has still been filed by the contesting defendants and has pointed out statement made in paragraph 9 of the writ application. In this regard, it has been further canvassed that the said amendment is formal in nature but the learned court below has wrongly sustained the objection on behalf of the contesting defendants that the plaintiff wants to take away the admission by way of amendment.

The learned counsel appearing for the respondent no. 1 has, however, supported the impugned order.

After careful consideration of the matter and the



submissions made on behalf of the parties, it appears that the amendment in the plaint has been sought by the plaintiff at the stage when no written statement was filed by the contesting defendants in the suit. The statement made in this regard in paragraph-9 of the writ application has not been denied by the respondent no. 1 and no counter affidavit has also been filed on behalf of the respondent no. 1. From the case of the plaintiff as apparent from the plaint, it appears that the suit property is the part of the property purchased by Radhan Dubey and the defendant 2nd set. The relief which has been sought by the plaintiff in the suit is directly dependent upon the issue as to whether the suit property was allotted in the share of Radhan Dubey in partition with his co-purchaser Darshan Dubey (defendant 2nd set). In this view of the matter, the point as to whether Radhan Dubey and Darshan Dubey purchased the property in jointness or in separate state is not very material and cannot be said to be such admission by the plaintiff which has conferred a valuable right in favour of the contesting defendants. Moreover, the contesting defendants who has not filed the written statement has opportunity to contest even the said assertion if the amendment is allowed.

It is well settled that by the Apex Court in the case of **Rajesh Kumar Aggarwal Vs. K. K. Modi, 2006 (4) SCC 385**

that the object of Order 6 Rule 17 C.P.C. is to allow all amendments that may be necessary for determining the real question in controversy between the parties. In view of the fact that the suit is at initial stage where no written statement has still been filed, this Court holds that the learned court below has committed error of jurisdiction in turning down the prayer for amendment No. Kha as sought by the plaintiff.

In result, this writ application is allowed and the impugned order is set aside. The amendment No. Kha as prayed by the plaintiff as mentioned in the amendment petition (Annexure-3) is allowed to be incorporated in the plaint.

(V. Nath, J)

Devendra/-

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