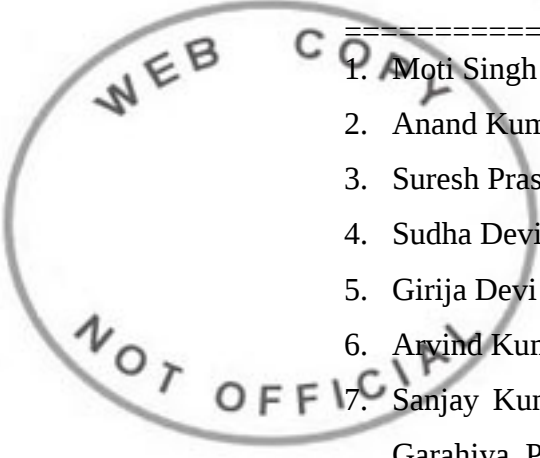


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18366 of 2014

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1. Moti Singh Son of Late Radha Kant Singh.
 2. Anand Kumar Singh.
 3. Suresh Prasad Singh @ Suresh Singh both are Sons of Late Ramadhar Singh.
 4. Sudha Devi Wife of Late Baccha Singh.
 5. Girija Devi Wife of Late Bharat Singh.
 6. Arvind Kumar Singh @ Dipu Singh Son of Late Bharat Singh
 7. Sanjay Kumar Singh Son of Late Baccha Singh All is residents of village - Garahiya, P.s. - Madhuban, District- East Champaran, Motihari.

.... Petitioner/s

Versus

1. Most. Vidyawati Devi Wife of Late Manan Shahi.
2. Bimlesh Shahi
3. Sunil Shahi
4. Mohan Shahi
5. Shilendra Shahi All are sons of Late Manan Shahi
6. Pushpa Devi
7. Usha Devi
8. Nisha Devi
9. Mamta Devi
10. Archana Devi All are daughters of Late Veer Bahadur Shahi All are residents of village + P.O. - Garar, P.S. - Bhaluani, District- Devariya, Uttar Pradesh.
11. Anil Kumar Singh Son of Late Jagdamba Singh Resident of Village - Harnibabu, Post - Tariya Bazar, P.S. - Tariya, District- Navgarh (Uttar Pradesh).
12. Saroj Devi Wife of Rajendra Veer Singh, Daughter of Late Veer Bahadur Shahi Resident of Village - Gangadharpur, Post - Uska Bazar, P.S. AND District- Navgarh (Uttar Pradesh).
13. Shahi Dubey Son of Matki Dubey Resident of Village - Garahiya, P.S. - Madhuvan, District- East Champaran.
14. Sheik Afzal Son of Sheik Vakil Resident of Village - Ibrahimpur, P.O. - Garahiya, P.S. - Mehasi, District- East Champaran.
15. Md. Sainul Son of Late Shahid
16. Md. Jafir Ahmad Son of Late Sanaullah
17. Sheik Hazi Mohammad Islam Son of Sheik Late Navijan All are Residents of

Village + P.O. - Garahiya, P.S. - Madhuvan, District- East Champaran.

18. Md. Ali Son of Sheik Fida Hussain Resident of Village - Ibrahimpur, P.O. - Garahiya, P.S. - Madhuvan, District- East Champaran.

19. Md. Quaim, Son of Late Rahmem Resident of Village -Sulusabad, P.S. - Mehasi, District- East Champaran.

20. Sheik Nisarar, Son of Late Nimadul Resident of Village + P.O. - Garahiya, P.S. - Madhuvan, District - East Champaran.

21. Md. Ataul Haque Son of Sheik Mohammad Isha Resident of Village + P.O. - Bahalolpur Sarki, P.S. - Kalyanpur, District - East Champaran.

22. Md. Ishar Son of Late Latif

23. Mobina Khatoon Wife of Mohammad Shaul

24. Smt. Usha Devi Wife of Ganga Sah

25. Smt. Girija Devi Wife of Tileshwar Sah

26. Bibi Tasalima Khatoon Wife of Haji Mohammad Islam All are Residents of Village + P.O. - Garahiya, P.s. - Madhuvan, District- East Champaran.

27. Md. Ali, Son of Sheik Fida Hussain

28. Md. Tajgir, Son of Mohammad Fida Hussain

29. Ashma Khatoon Wife of Mohammad Ali All are Residents of Village - Ibrahimpur, P.O. - Garahiya, P.S. - Mehasi, District - East Champaran.

30. Md. Jaffir Ahmad Son of Mohammad Sanaullah, Resident of Village + P.O. - Garahiya, P.s. - Madhuvan, District - East Champaran.

31. Alok Singh @ Chandan Singh Son of Late Bharat Singh

32. Digvijay Kumar Singh Son of Late Baccha Singh Both are Residents of Village - Garahiya, P.S. - Madhuvan, District- East Champaran. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-01-2015

Heard Mr. K.N. Choubey, the learned senior counsel appearing on behalf of the petitioners and Mr. S.S. Dwivedi, the learned senior counsel appearing on behalf of the respondents.



Calling in question the order rejecting the prayer for amendment in the plaint, the plaintiffs in the suit have filed this application under Article 227 of the Constitution of India. The facts which are not in dispute, are that the plaintiffs have filed the suit for declaration of right, title and possession over the suit land and further for declaration of the sale deeds executed by the defendant nos. 3 to 4 in favour of other defendants as illegal and not binding on the plaintiffs. The parties went to trial, led their evidence and finally after the arguments by the respective parties were over, the learned court below posted the suit for judgment. From the impugned order, it transpires that the petition for amendment was filed only three days prior to the date fixed for judgment. The learned court below rejected the prayer for amendment in the plaint and posted the matter for judgment in the second half of the day. However, the plaintiff-petitioners thereafter filed another petition requesting the court not to deliver the judgment stating that they proposed to assail the order, rejecting the prayer for amendment, by filing writ application before this Court. Accepting the prayer, the learned court below has deferred passing of the judgment in the suit.

The learned senior counsel for the petitioners has submitted that the proposed amendment is simple and formal in nature by which the plaintiffs only want to introduce in the plaint the year of

partition in the family. However, from the perusal of the petition for amendment (Annexure-2), it transpires that a long passage containing several statement of facts has been sought to be introduced in paragraph 5 of the plaint and some words, too, have been sought to be deleted and added in the said paragraph.

Mr. Dwivedi, the learned senior counsel for the respondents has submitted that the proposed prayer for amendment is mala fide as the plaintiffs intended only to preempt the passing of the judgment in the suit, and has tried to substantiate the said submission with the reasons stated in the impugned order. It has been further propounded that the law does not permit a party to amend the plaint when, after completion of hearing, the suit has been posted for judgment.

The amendment of pleading is governed by the provisions of Order VI Rule 17 C.P.C. wherein, by amendment, a proviso has also been introduced. For ease of reference the provision of Order VI Rule 17 C.P.C. is quoted hereinbelow:-

17. Amendment of pleadings- *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining of real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

From the impugned order, it transpires that the suit has been heard on day to day basis with the agreement of the parties and thereafter it was posted for judgment. Just before the date of judgment, the plaintiffs have made the prayer for amendment in the plaint. The petition for amendment (Annexure-2) also does not contain any averment disclosing the facts which may lead to the inference that the plaintiffs, in spite of due diligence, could not seek the amendment before the commencement of trial. This Court, therefore, finds substance in the submission on behalf of the respondents that the proposed amendments have not been sought bona fide. In the backdrop of these facts and reasons, this Court is not persuaded to interdict the impugned order in this writ application.

The writ application is, accordingly, dismissed with direction to the learned court below to proceed with the suit in accordance with law including the pronouncement of the judgment without delay.

Devendra/-

(V. Nath, J)

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