

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3368 of 2016

=====

Chandra Bhushan Prasad Singh

.... Petitioner/s

Versus

Chathu Sah & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Binay Kumar Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 25-07-2016 Heard the learned counsel, Mr. Binay Kumar Singh for the petitioner and the learned counsel, Mr. Lokesh Kumar Singh for the respondent No.7.

Perused the order dated 06.01.2016 passed by Sub Judge VI, Gopalganj in Title Suit No.315 of 1998 whereby the learned Court below rejected the amendment application filed by the plaintiff-petitioner.

It may be mentioned here that earlier suit was filed by the plaintiff-petitioner for declaration of title and recovery of possession of the suit property. The defendant No.2 was subsequently added as party by order dated 13.09.2012 on the ground that he is also a family member of the plaintiff's family. Thereafter, amendment application has been filed by the plaintiff alleging that the defendant No.2 is neither member of the family of the plaintiff nor resident of village of the plaintiff. In the

changed circumstances, it is essential to amend the plaint in paragraph 9 to the effect that defendant No.2 had no concern with the suit land and Budh Ram Bhagat died in the state of jointness with his brother Bal Mukund Bhagat.

Admitted fact is that no relief was claimed earlier by the plaintiff. No prayer was made about the status of the defendant No.2-respdent No.7. After the defendant No.2 is added as party because of changed circumstances, the plaintiff has to make a case against the defendant No.2 and, therefore, amendment application was filed. Now, if the amendment application is rejected then the dispute between the plaintiff and the defendant No.2 cannot be resolved and that will lead to multiplicity of proceedings. Therefore, for just decision of the controversies between the parties, the amendment is required in the present suit. The finding, if any, recorded while adding the defendant No.2 as party in the suit is only an interlocutory order. Whether the defendant No.2 belonged to the member of the plaintiff's family or not that question can only be decided after the evidences are adduced by the parties.

In view of the above facts and circumstances of the case, in my opinion, the learned Court below has wrongly rejected the amendment application and thereby refused to exercise a

jurisdiction vested in it by law.

Thus, this writ application is allowed. The impugned order is set aside. The plaintiff's amendment application is allowed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--