

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14492 of 2015

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Baidyanath Bhagat

.... Petitioner/s

Versus

Sukhdeo Bhagat & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prativa Kumari

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 01-09-2016

Heard learned counsel Mr. Arbind Kumar Singh for the petitioner and learned counsel Mr. Shiv Shankar Sharma for the respondents.

From perusal of the impugned order dated 24.07.2015 passed by the learned Subordinate Judge-VII, Muzaffarpur in Partition Suit No.404 of 2010, it appears that the amendment application filed by the plaintiff has been rejected after deciding the same on merit although the issues have been framed in the partition suit.

It is settled principle of law that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merit of the amendment and the merits of the amendment sought to be incorporated by way of amendment are

not to be adjudged at the stage of allowing the prayer for amendment. This is consistent view of the Supreme Court. Reference may be made to the other decision of the Supreme Court, **(2008) 17 Supreme Court Cases 671.**

In view of the fact that the issues have not yet been framed in a suit for partition, in my opinion, therefore, the court below should have liberally allowed the amendment application but by rejecting the amendment application on merit the court below has not exercised the jurisdiction vested in it by law.

In the result, this writ application is allowed. The impugned order is set aside and the amendment application filed by the plaintiff is hereby allowed.

(Mungeshwar Sahoo, J)

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