

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1517 of 2016**

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Asha Devi

.... .... Appellant/s

Versus

Kamal Deo Thakur & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Krishna Prasad Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR  
SAHOO  
ORAL ORDER**

2 22-12-2016

Heard the learned counsel for the petitioner.

Perused the impugned order dated 21.09.2016 passed by the Sub Judge III, Rosera in Title Suit No.64 of 2002 whereby the learned Sub Judge has allowed the amendment application filed by the plaintiff and allowed the plaintiff to add the Schedule No.IV.

It appears that partition suit has been filed by the plaintiffs-respondents. In the amendment application, it was stated that the plaintiffs specifically mentioned in the plaint at paragraph 6 to 8 that he had no knowledge about some of the joint family property and whenever he will come to know, he will pray for amendment. The amendment application was filed by the plaintiffs-respondents alleging that many properties are left to be added in the subject matter of the partition suit and the plaintiffs gave the details thereof. The Court below found that it will not change the nature of the suit and it is necessary for the



determination of real controversy between the parties and allowed the amendment application.

The grievance of the petitioner firstly is that while allowing amendment application, the Court below has not considered proviso to Order VI Rule 17 C.P.C. The second objection is that so far Plot No.1865, 3 katha 10 dhurs of Schedule IV, mentioned in the amendment application, is the self-acquired property of the petitioner. The third objection of the petitioner is that the amendment which is being sought by the plaintiffs is time barred because the property of Plot No.1865 is the gifted property of the petitioner and, therefore, if now suit will be filed for declaring the gift deed, it will be barred by law of limitation but the Court below did not consider all these aspects of the matter.

So far first objection raised by the learned counsel for the petitioner is concerned, it may be mentioned here that by this amendment, the plaintiffs sought to add a new Schedule alleging specifically that these properties are also the joint family property liable for partition. It is admitted fact that in the plaint, the plaintiffs had stated that he had no knowledge about the other particulars of joint family property and whenever he will come to know, he will file the amendment application. Now therefore, the question is whether the property sought to be added are the joint



family property or not, that can be decided only in the final judgment. So far proviso to Order VI Rule 17 C.P.C. is concerned, as stated above, it is the case of the plaintiff that he was not knowing the details of the property. In my opinion, therefore, the proviso will not come into play.

So far the objection of the petitioner that the said Plot No.1865 is the self-acquired property of the petitioner is concerned, again it is a question on merit and while considering the amendment application, the Court is not required to pre-judge this issue. Reference may be made to the decision of the Supreme Court in (2006) 4 Supreme Court Cases 385 and (2008) 17 Supreme Court Cases 671.

So far the objection of the petitioner that the suit for setting aside the gift deed will be barred by law of limitation is concerned, it may be mentioned here that the plaintiffs never prayed for declaration that the gift deed may be set aside or may be declared as null and void. He only added the properties mentioned in Schedule IV for partition on the ground that the said properties are the joint family properties.

In view of the above facts and circumstances of the case and law laid down by the Supreme Court, as aforesaid, the question as to whether it is joint family property or self-acquired



property, cannot be considered at the time of allowing the amendment application.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

**(Mungeshwar Sahoo, J)**

Saurabh/-

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