

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1294 of 2016**

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Trilok Nath Thakur

.... Appellant/s

Versus

Kamal Deo Thakur & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Uma Shankar Singh

For the Respondent/s : Mr.

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

ORAL ORDER

2 08-12-2016

Heard learned counsel for the petitioner.

2. Perused the impugned order dated 21.09.2016 passed by Subordinate Judge-III, Rosera allowing the amendment sought by the plaintiffs-respondents in the plaint.

3. From perusal of the impugned order, it appears that the amendment application was filed by the plaintiffs praying for adding some properties in the schedule of the partition suit after closure of evidence of both the parties. The court below by the impugned order has allowed the said amendment application and added the properties in the schedule as prayed for by the plaintiffs.

4. It may be mentioned here that the amendment sought for by the plaintiffs is not with respect to facts. The grievance of the petitioner is that the property stands in the name of his wife or his sons and those properties are self acquired properties of the wife of the petitioner or his sons. Therefore, at



this stage the amendment could not have been allowed by the court below.

5. So far the submission of learned counsel that those properties are self acquired properties, which are standing in the name of wife of the petitioner or his son is concerned, it is a question on merit. The Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal & Ors Vs. K.K. Modi & Ors (2006) 4 Supreme Court Cases 385** has held 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 merits 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 view is again reiterated by the Supreme Court in (2008) 17 Supreme Court Cases 671.

6. So far stage is concerned, the plaintiffs are not praying for amendment for bringing entirely new fact on the record. It is not denied that the properties which are sought to be added stands in the name of one or the other member of the family.

7. Thus, I find no reason to interfere with the impugned



order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

8. However, if so advised, the petitioner may file additional written statement to the amended portion only.

(Mungeshwar Sahoo, J)

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