

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4469 of 2014

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1. Sudhir Singh @ Sudhir Kumar Son Of Jagarnath Singh
2. Ram Bihari Singh
3. Chunnu Kumar Singh
4. Rakesh Singh
5. Ravi Kumar Singh All Son Of Sadhu Sharan Singh All Residents Of-
Patahi, P.S.- Patahi, District- East Champaran, Motihari

.... Petitioner/s

Versus

Shambhu Sharan Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 13-01-2016

Heard learned counsel for the petitioners.

This application, under Article 227 of the constitution of India, has been filed by the defendants/petitioners against the order dated 02.12.2013 passed by the Sub-Judge- 9, Motihari, East Champaran, in partition suit No. 251 of 2009.

It appears that the respondents filed the aforesaid suit for partition. Thereafter, amendment application was filed for declaration of the documents filed by the defendants in the written statement are void *ab initio* and not acted upon. By the impugned order, the court below has allowed the amendment application.

Learned counsel for the petitioners submitted that, in fact, the amendment sought for is barred by law of limitation and

at the time of filing of the application for amendment, trial of the suit has already been commenced and seven witnesses of the plaintiffs have already been examined.

From perusal of the amendment application, which has been annexed as annexure-1 in the writ application, it appears that the amendment was sought for because in the written statement, the defendants gave the details of the sale deeds and other documents and, therefore, the plaintiff prayed for amendment in the plaint by making a statement to the effect that all the sale deeds and other documents are void *ab initio* and not acted upon. So far the statement that the trial has already been commenced and the evidences of witnesses have been examined, it may be mentioned that the Hon'ble Supreme Court in the case of ***Raj Kumar Gurawar (dead) through LRs. Vs. S.K. Sarwagi and Company Pvt. Ltd. & another*** reported in ***2008 (14) SCC 364*** has held that a pre trial amendment can be allowed literally as the opposite party would not be prejudiced because he will have an opportunity of meeting the amendment sought to be made. However, in case of amendments after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise. In the present case, admittedly, the evidence of the defendants/petitioners has not yet

commenced and, therefore, there is no question of prejudice to the defendants-petitioners arises. Moreover, the defence has been taken by the defendants in the written statement and, therefore, to that effect only, the plaintiff is making a statement by amendment in the plaint.

In such situation, only on the ground that the trial has commenced, the amendment application could not have been rejected by the court below and, therefore, the order needs no interference in supervisory jurisdiction. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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