

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11137 of 2014

1. Mahesh Prasad Son of Late Sukhdeo Prasad
2. Mostt. Saryabati Devi wife of Late Sukhdeo Pd. Both resident of village- Rupouli Bishunpur P.O. Barhanda, P.S. Minapur, District- Muzaffarpur

.... Plaintiffs/Petitioner/s

Versus

1. Lal Babu Prasad Son of Late Sukhdeo Prasad
2. Mostt. Chandrama Devi Wife of Late Laxman Nariain Pd.
3. Arjun Prasad
4. Udai Prasad Both sons of Late Laxman Narain Pd.
5. Mostt. Ram Dulari Devi Wife of Late Brahmdeo Prasad All resident of village- Rupauli Bishunpur, P.S. Barhanda, P.S. Minapur, District- Muzaffarpur
6. Ram Babu Prasad Son of Late Sukhdeo Prasad of village- Kanti Kasba Toli, Kolhia, P.S. Kanti, P.O. Kanti, District- Muzaffarpur
7. Geeta Devi wife of Shiv Shankar Prasad @ Gauri Shankar Prasad D/o Late Sukhdeo Prasad resident of village Gadaichak, P.O. Mahdaiya, P.S. Minapur, District Muzaffarpur
8. Shyam Babu Prasad Son of Late Sukhdeo Prasad 8(a) Bachi Kumari D/o Shyam Babu Prasad Both residents of village Mustafaganj Chhitarpatti, P.O. Mustafaganj, P.S. Minapur, District- Muzaffarpur
9. Gulam Zilani Warsi Son of Dr. Amanatulla Warsi
10. Raj Kishore Narain Singh Son of Late Jagdish Narain Singh
11. Shanti Devi wife of late Ram Sevak Pd.
12. Sushila Devi wife of Shyam Nandan Kesri
13. Raj Kishore Prasad Son of Ram Swaroop Prasad, All resident of village- Kanti Kaswan, Tola Kothia, P.S. Kanti, District- Muzaffarpur

..... Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-07-2016

Heard learned counsel for the petitioners.

2. The plaintiffs are the petitioners in this application and are aggrieved by the impugned order whereby the prayer for amendment in the plaint has been turned down.

3. The plaintiffs have filed the suit for partition of the suit property. During the pendency of the suit the Defendant No. 10 was impleaded as intervener-defendant and he filed his written statement on 27.02.2007, wherein, he disclosed to have purchased the portion of the suit property from the father of the plaintiffs and the defendants through a registered sale deed. When the suit reached to the stage of argument, the plaintiffs filed the petition for amendment in the plaint for deleting the property purchased by the Defendant No. 10 in view of the claim over the portion of the suit property as made by Defendant No. 10. By the impugned order the learned court below has found that the prayer for amendment has been made after the trial has commenced and when the suit has been at the argument stage and after further finding that the plaintiffs have failed to establish due diligence, the prayer for amendment has been rejected.

4. The learned counsel appearing on behalf of the petitioners has submitted that the prayer for amendment is formal in

nature whereby the plaintiffs have prayed for amendments in view of the claim of the Defendant No .10 over the portion of the suit property and therefore, the learned court below ought to have allowed the said prayer.

5. After considering the submissions and perusal of the materials on record as well the impugned order, it is manifest that the suit has been filed by the plaintiffs for partition of the suit property. The Defendant No. 10 after his impleadment in the suit as intervener-defendant filed his written statement on 27.02.2007 putting forth his claim over the portion of the suit property on the basis of purchase. The plaintiffs did not make any prayer for amendment for long 7 years till the suit reached the stage of argument. The submission on behalf of the petitioners that the amendment sought for are essential in nature is not sustainable and sufficient for allowing the prayer for amendment. It is also manifest that the suit is to be decided on its own merits according to the pleadings of the parties and therefore even if the plaintiffs accept the claim of the Defendant No. 10, as made, the court below is competent to take notice of the said fact in accordance with law. This Court, therefore, comes to the conclusion that the refusal of the prayer for amendment as made by the plaintiffs would not prejudice the case of the plaintiffs and the learned court below has committed

no error of jurisdiction or illegality in rejecting the prayer for amendment after recording the finding of absence of due diligence.

6. The application is accordingly dismissed.

(V. Nath, J)

