

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11611 of 2014

1. Pradeep Rai Son of Late Shiv Rai Resident of Village Salempur, P.O. Nandlalpur, P.S. Lalganj, District Vaishali.

.... Petitioner/s

Versus

- 1. Kuldeep Rai.
- 2. Raghuveer Rai. Both Son of Late Shiv Rai Resident of Village Salempur, P.O. Nandlalpur, P.S. Lalganj, District Vaishali.
- 3. Ramchandra Rai S/o Ram Prasiddh Rai.
- 4. Sachchidanand Rai S/o Ram Prasiddh Rai.
- 5. Binod Rai S/o Ramchandra Rai.
- 6. Pramod Rai S/o Late Vidyanand Rai.
- 7. Kumod Rai S/o Late Vidyanand Rai.
- 8. Subodh Rai S/o Late Vidyanand Rai under guardianship of his brother Pramod Rai.
- 9. Hari Shankar Rai S/o Late Ram Nagina Rai.
- 10. Uma Shankar Rai S/o Late Ram Nagina Rai. Respondents No. 3 to 10 resident of Village Salempur, P.O. Nandlalpur, P.S. Lalganj, District Vaishali.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Adv
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-08-2016

Heard learned counsel for the petitioner.

The plaintiff is the petitioner in this application questioning the legal sustainability of the impugned order by which the learned court below has turned down the prayer for amendment

in the plaint for incorporating some more plots as suit land.

The fact is apparent that the suit for partition has been filed by the plaintiff-petitioner in the year 2003. After completion of evidence, the argument on behalf of both the parties is also complete which fact is apparent from the impugned order itself. In the petition filed by the plaintiff seeking amendment of the plaint by incorporating some more plots there is no reason assigned for not seeking the amendment earlier. The learned court below after considering the facts and circumstances of the case has come to the conclusion that the plaintiff wants to linger the disposal of the suit as he already had the knowledge of the facts sought to be incorporated by amendment.

Mr. Thakur, learned counsel for the petitioner has submitted that the learned court below ought to have allowed the prayer of amendment as the principle is well settled that all such amendments be allowed which are for the purpose of complete adjudication of the dispute between the parties. It has also been submitted that the learned court below has passed the order only on the basis of surmises and conjectures.

After considering the submissions and perusal of the impugned order, it is manifest that the plaintiff has preferred the amendment in the plaint after the conclusion of the arguments in the

suit on behalf of the parties.

From the perusal of the petition for amendment (Annexure-4), it does not appear that the element of due diligence has been shown or established. The principle is well settled that an amendment if allowed will lead to *de novo* trial of the suit, such amendment should not be allowed. The submission on behalf of the petitioner that the petitioner would not lead evidence in the suit would not by itself be sufficient as the defendants will have to be allowed opportunity to contest and lead evidence.

Considering the facts and circumstances of the case, this Court is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

However, the petitioner shall be at liberty to raise his objection, if such occasion arises in accordance with the provision of Section 105 of the C.P.C.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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