

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14399 of 2014

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Akhilesh Tiwary S/o Late Dinesh Tiwary Resident of Village Tiwarichak, P.S. Bihta, District Patna.

.... Petitioner/s

Versus

1. Lallan Tiwary S/o Late Jagdish Tiwary
2. Mahendra Tiwary S/o Late Jagdish Tiwary
3. Nagendra Tiwary S/o Late Jagdish Tiwary
4. Jhulan Tiwary S/o Late Jagdish Tiwary All Resident of Village Tiwarichak, P.S. Bihta, District Patna.
5. Vidyabati Devi D/o Bageshwar Tiwary, W/o Late Sidhnath Tiwary R/o Gangachak, P.S. Bikram, District Patna.
6. Lalmuni Devi W/o Late Parmanand Tiwary
7. Umesh Tiwary S/o Late Dinesh Tiwary
8. Sudeshwar Tiwary S/o Late Dinesh Tiwary
9. Rajeshwar Tiwary S/o Late Dinesh Tiwary
10. Sanjay Tiwary S/o Late Dinesh Tiwary Respondent No. 6 10 are Resident of Village Tiwarichak, P.S. Bihta, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Pandey, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-10-2016

Heard Mr. Thakur, learned counsel for the petitioner.

The plaintiff is the petitioner in the present application and is aggrieved by the impugned order by which the learned court has turned down the prayer for amendment in the plaint as made by the plaintiff.



After considering the submissions and perusal of the impugned order, it is evident that the suit has been filed in the year 1988 wherein the plaintiff has prayed for relief with regard to the deed dated 01.06.1988. It further transpires that the defendant nos. 3 and 4 of the suit filed the written statement on 28.11.1988 and they raised their assertions with regard to the sale deed and the gift deed against which the plaintiff at present wants to incorporate the relief by way of amendment. The suit thereafter proceeded and even during the cross examination, the defendants put the relevant questions to the plaintiff with regard to the sale deed and gift deed. The plaintiff did not take any steps earlier either in view of the assertions made by the defendants in the written statement as far back as on 28.11.1988 or even thereafter when the specific questions were put to the plaintiff during cross examination. It was only when the suit was posted for argument that the plaintiff came out with the prayer for amendment in the plaint praying for incorporation of the new relief with regard to the gift deed and further for incorporation of certain facts with regard to the sale deed dated 01.06.1988 for which the relief was already prayed. The learned court below, after considering the submissions and facts and circumstances of the case, has recorded the conclusion that the plaintiff has failed to explain as to what prevented him from seeking the amendment at the earlier stage of the suit. At this stage,



Mr. Thakur, learned counsel for the petitioner has submitted that the plaintiff-petitioner would not lead any evidence in view of the amendment. However, even if that is so, the defendants will have to be given opportunity to file additional written statement and to lead evidence if so desired. It is well settled that any amendment which may lead to denovo trial of the suit cannot be allowed. This Court is therefore not persuaded to find illegality or perversity in the impugned order.

The application is, accordingly, dismissed.

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

(V. Nath, J)

Devendra/-

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