

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4813 of 2013

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Ramendra Mishra S/O Late Jagdish Mishra R/O Village- Thalwara, Police
Station- Ashok Paper Mill, District- Darbhanga, At Present R/O Mohalla-
Laxmipur Raj Pokhara, Police Station- Laheriasarai, District- Darbhanga

.... Petitioner/s

Versus

1. Jiwaneshwar Mishra.
2. Ram Babu Mishra, both S/O Late Pramod Mishra R/O Village-
Thalwara, Police Station- Ashok Paper Mill, District- Darbhanga.
3. Kalpana Devi D/O Late Pramod Mishra, W/O Sri Satya Narayan Jha
R/O Village- Sahora, P.O.- Anandpur, Police Station- Ashok Paper Mill,
District- Darbhanga. Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 11-02-2016 Heard the learned counsel for the petitioner. Nobody

has appeared on behalf the respondents though the office has

reported that the notices on the respondents have been validly

served.

By the impugned order, the learned court below has

rejected the prayer of the plaintiff-petitioner for extension of time

for incorporating the amendment in the plaint as directed by the

order dated 31.08.2002.

The facts are not in dispute that an agreement was

entered into between the father of the plaintiff and the father of the

defendants for the transaction of sale and purchase of the suit land.



It is also not in dispute that subsequently both the father of the plaintiff and the father of the defendant died. However, it is also the case of the plaintiff that he requested the defendants to execute the sale deed in pursuance to the agreement for sale but they did not become ready to adhere to the terms of the agreement for sale and consequently the suit for specific performance of contract was filed. During the pendency of the suit, the plaintiff filed a petition for amendment including the amendment in the plaint with regard to the word 'plaintiff' to be substituted by the words 'plaintiff's father' in paragraph- 1 to 12. The amendment sought by the plaintiff was allowed by order dated 31.08.2002 by the court after awarding the cost to the defendants. It is the case of the plaintiff that the cost has been paid to the defendant and other amendments were incorporated in the plaint except the amendment relating to the addition of the words 'plaintiff's father' in paragraph- 1 to 12. It has also been the case of the plaintiff that the said amendment could not be incorporated due to mistake of the counsel. By the impugned order, the learned court below, however, has turned down the prayer for extension of time for incorporating the above amendment in the plaint.

After considering the submissions made on behalf of the petitioner and perusal of the records, it transpires that the facts are not in dispute that the amendment with regard to the addition

of the word 'plaintiff's father' in paragraph-1 to 12 in the plaint was earlier allowed along with the other two amendments. It is also apparent that the other amendments were carried out and incorporated in the plaint, but the amendment with regard to addition of the words 'plaintiff's father' in the relevant paragraphs of the plaint as directed could not be carried out. It has been submitted by the learned counsel, at this juncture that the plaintiff, in his deposition has clearly stated that the agreement for sale was entered in between the father of the plaintiff and the father of the defendant. It is thus manifest that the amendment to be incorporated is formal in nature but could not be incorporated in the plaint due to the mistake of the counsel of the plaintiff. Under such circumstances, the learned court below ought to have allowed the plaintiff to incorporate the amendment by extending the time for incorporation in the plaint.

In view of the aforesaid facts and circumstances, this writ application is allowed and the impugned order is set aside. The plaintiff is allowed to incorporate the above amendment, as prayed, within two weeks from the date of receipt/production of this order in the court below.

Devendra/-

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(V. Nath, J)