

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 21147 of 2014

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Ramashish Dusadh, Son of Dwarika Dusadh, Resident of Village - Khan
P.O Kapasia, P.S and District - Aurangabad

.... Plaintiff/Appellant/Petitioner

Versus

1. Rajendra Mahto, Son of Kuldip Mahto
2. Deobasia Devi, Wife of Kuldip Mahto, All resident of Village Khan P.O
Kapasia, P.S + District – Aurangabad (Bihar)

.... Defendant/Respondents/Respondents

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Appearance :

For the Petitioner : Mr. Anil Kr. Singh No. VI, Advocate

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

2 16-08-2016

Heard Mr. Anil Kumar Singh No. VI learned counsel

appearing for the petitioner in I.A. No. 6460 of 2016 which has
been filed for stay of further proceeding of the appeal in the
appellate court below as well as on merits of the present case.

The petitioner, who was plaintiff in the suit, and has
filed the appeal against the judgment and decree of dismissal of
the suit, has preferred this application under Article 227 of the
Constitution of India assailing the impugned order by which the
learned court below has rejected the prayer of the petitioner for
amendment in the plaint.

After considering the submissions and from perusal
of the impugned order, it is manifest that the suit filed by the
plaintiff-appellant-petitioner seeking relief for declaration of title



and possession over the suit land was dismissed by the trial Court and thereafter, the petitioner has preferred the title appeal before the appellate court below. During the pendency of the appeal, the petitioner filed the petition (Annexure-2) praying for amendment in the plaint. The learned court below after considering the facts and circumstances of the case has come to the conclusion that the plaintiff-petitioner was aware of the sale deed with regard to which the relief has been sought to be incorporated by amendment at the appellate stage, but no relief against the said instrument was prayed in the suit. It has been also found that the plaintiff-petitioner failed to establish that he was legal heir of the Khatiyani Raiyat. The learned court below has also found that the plaintiff-petitioner has failed to establish the element of due diligence in not preferring the amendment as now prayed, before the commencement of the trial of the suit or at any appropriate stage thereafter. The learned court below has further come to the conclusion that the amendment as prayed by the plaintiff-petitioner is only to fill-up the lacuna in his case at appellate stage which shall cause prejudice to the other side.

In the aforesaid backdrop of facts, this Court is not persuaded to find that the reasoning assigned by the learned court below is perverse or

unreasonable in any manner. This Court is not inclined to interfere in the impugned order under Article 227 of the Constitution of India.

The application is, therefore, dismissed.

(V. Nath, J.)

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