

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17878 of 2013

=====

Lalan Sah son of late Bindeshwari Sah, resident of village-saur Bazar P.S.
Saur Bazar, District-Saharsa.

.... Petitioner/s

Versus

1. Smt. Rukmini Devi.
2. Sukumari Devi, both daughters of late Sahdeo Singh.
3. Kedar Sah.
4. Umesh Sah, both sons of late Sahdeo Sah.
5. Dev Narayan Sah son of late Babulal Sah.
6. Sanjay Sah son of late Sukhdeo Sah.
7. Manoj Sah son of late Sukhdeo Sah.
8. Most Savitri Devi, wife of late Sukhdeo Sah.
9. Kailash Sah, son of late Jagdeo Sah.
10. Bindeshwari Sah, son of Domi Sah.
11. Suresh Sah, son of Domi Sah.
12. Bande lal Sah son of Domi Sah.
13. Madan Sah son of Rajeshwar Sah.
14. Kari Sah @ Laxmi Sah son of Rajeshwar Sah.
15. Vikash Sah son of Rajeshwar Sah.
16. Subhash Sah, son of Rajeshwar Sah, all are resident of
village+P.O.+P.S.-Saur Bazar, District-Saharsa.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Neeraj Kumar
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 04-02-2016 Heard Mr. Ajay Kumar Singh, the learned counsel for
the petitioner on merits as well as on the interlocutory application
(I.A. No. 8113 of 2015).

The petitioner has assailed the order passed by the

learned court below whereby the prayer of the plaintiffs for deletion of one of the reliefs from the plaint has been allowed.

The plaintiff-respondents have admittedly filed the suit for declaration of title and possession and also claimed the relief that the survey entry in the name of the defendants is incorrect. The defendant-petitioner has filed the written statement contesting the suit and claimed his own independent title and possession over the suit land. During the pendency of the suit, the plaintiffs filed the petition for abandoning the relief with regard to the survey entry. The learned court below has allowed the said prayer of the plaintiffs.

Mr. Singh, the learned counsel for the petitioner has submitted that the prayer of the plaintiffs for deleting the relief with regard to the survey entry is malafide in view of the fact that the plaintiffs suppressed the another fact that he was litigating before the survey authorities with regard to the survey entries and after his success, he has filed the present petition for deletion of the relief with regard to the survey entry. It has been propounded by the learned counsel for the petitioner that the deletion of the relief would preclude the chance of the defendant to assail the order in favour of the plaintiffs by the survey authorities which has been passed during the pendency of the suit. It has also been

submitted that the learned court below has not properly appreciated the facts and circumstances of the case and has committed irregularity in passing the impugned order.

After careful consideration of the matter and submissions on behalf of the defendant-petitioner, it is manifest that the seminal issue in the suit is with regard to the title and possession over the suit land. Though, the relief for declaration that the survey entry in the name of the defendant is wrong has been claimed but the plaintiffs, later on, have prayed to delete /abandon the said relief. It is also the admitted fact that the plaintiff has not introduced any claim on the basis of the order passed in his favour during the pendency of the suit with regard to the survey entry. In this view of the matter, the defendants are always at liberty to pursue the case as pleaded by them in their written statement and the deletion/abandonment of the relief by the plaintiff with regard to the survey entry would not prejudice the defendants' case in any manner. It is not for the defendant to insist that the plaintiffs must carry on with a particular relief unless some legal right has accrued to the defendant. The learned court below has thus not committed illegality or irregularity in passing the impugned order.

This Court, therefore, does not find any merit in this

writ application which is, accordingly, dismissed. The interlocutory application (I.A. No. 8113 of 2015) also stands dismissed.

(V. Nath, J)

Devendra/-

U			
---	--	--	--

