

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8835 of 2014

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Raj Kishore Prasad son of Payare Mahto resident of Mohalla Chhoti Pahari Town,
P.S. Bihar Sharif, District - Nalanda.

.... Petitioner/s

Versus

1. Munni Devi wife of Baleshwar Mahto, daughter of Peyare Mahto resident of village Biyawari, P.O. Maghara, P.S. Dip Nagar, District Nalanda.
2. Smt. Chinta Devi wife of Pyare Mahto. Both resident of mohalla Chhoti Pahari, P.O. Sohsarai, Town, P.S. Bihar Sharif, District Nalanda.
3. Anupal Prasad son of Late Ram Chandra Mahto resident of mohalla Asha Nagar, P.S. Sohsarai, Town Bihar Sharif, District Nalanda, at present residence of mohalla Kagazi Town, P.S. Bihar Sharif, District Nalanda.
4. Smt. Kusha Devi wife of Shrawan Singh, daughter of Late Ram Chandra Mahto resident of village Alaudia, P.O. Tiuri, P.S. Manpur, District Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Biresh Kumar Sinha, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 25-04-2016

Heard the learned counsel for the petitioner.

The present application under Article 227 of the Constitution of India has been filed challenging the order dated 28.02.2013 passed in Title Suit No. 101 of 1997 by which the prayer for amendment in the plaint made on behalf of the plaintiff in the petition dated 07.01.2012 has been rejected.

The suit has admittedly been filed for partition. From the



impugned order, it transpires that the evidence in the suit is over and the matter has been posted for argument. It also further transpires that during the stage of argument, the defendant no. 3 was allowed by order dated 14.12.2011 to adduce in evidence the two sale deeds dated 17.09.2011 and 19.09.2011. The plaintiff thereafter has preferred amendment in the plaint with regard to the legality and validity of those sale deeds and making relevant averments in that regard.

It transpires from paragraph-2 of the amendment petition (Annexure-1) that there has been no pleading on behalf of the defendant no. 3 in the written statement regarding those two sale deeds nor earlier any evidence has been adduced by the respondent no. 3 in that regard. The amendment as prayed is claimed to have been necessitated by reason of production of those two sale deeds by the defendant no. 3 in evidence. The aforesaid fact has also been accepted by the learned counsel for the petitioner that there has been no pleading by the defendant no. 3 in the written statement with regard to those two sale deeds which have been allowed to be marked as exhibit by order dated 14.12.2011. The learned court below has further also observed that the suit is very old has been posted for argument and that is also one of the reasons for not allowing the prayer for amendment of the plaintiff.

In view of the aforesaid facts, this Court does not find any

error of jurisdiction or illegality in the impugned order.

The present writ application is dismissed with observation that the plaintiff shall be at liberty during the course of submission to raise appropriate objection with regard to those two sale deeds in accordance with law, which have been adduced in evidence by order dated 14.12.2011.

(V. Nath, J)

Devendra/-

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