

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3371 of 2014

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1. Butan Rai Son Of Manohar Rai
 2. Upendra Rai Son Of Manohar Rai
 3. Rambabu Rai Son Of Hira Rai
 4. Bhuneshwar Rai Son Of Hira Rai
 5. Rambali Rai Son Of Ganga Rai
 6. Baijnath Rai Son Of Ganga Rai
 7. Dinanath Rai All Sons of late Kishundeo Rai All Resident Of Village- Mohammedpur Pohiyari, P.S. Desari, District- Vaishali
 8. Binod Rai
 9. Bholu Rai
 10. Chinta Devi W/o of late Kishundeo Rai
 11. Parmeshwar Rai Son Of Ganga Rai
 12. Nokhi Rai Son Of Ganga Rai All Resident Of Village- Mohammedpur Pohiyari, P.S. Desari, District- Vaishali

.... Petitioners

Versus

1. Ram Nandan Rai Son Of Ram Shobhan Rai
2. Hari Prasad Rai Son Of Ram Shobhan Rai
3. Gopal Rai Son Of Ram Shobhan Rai All Resident Of Village- Mohammedpur Pohiyari, P.S. Desari, District- Vaishali
4. Shail Kumar Devi Wife Of Bishwanath Rai Resident Of Village- Jalalpur, P.S. Mohiuddin Nagar, District- Samastipur
5. Ram Nandan Rai & Ors

.... Respondents

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Appearance :

For the Petitioner/s : Mr.N.C.Verma, Adv.
Mr.Natraj Verma, Adv.

For the Respondent/s : Mr. Radha Mohan Pandey, Adv.
Mr. Ganesh Prasad Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-10-2016

Heard the learned counsel for the petitioners and the
learned counsel for the respondents.

The plaintiffs are the petitioners in this application
questioning the legal pregnability of the impugned order by which the

learned court below has turned down the prayer of the plaintiffs for amendment in the plaint.

The suit was filed by the plaintiff in the year 1977 praying for declaration of title and recovery of possession with further relief against some sale deeds standing in the name of the contesting defendants. From the impugned order it transpires that the plaintiffs have examined almost all the witnesses and at that stage the prayer for amendment has been sought for.

From the perusal of the amendment petition as annexed with the application, it transpires that a large number of plots have been sought to be incorporated as suit plots and further other amendments have also been prayed. The learned court below has disbelieved the ground propounded by the plaintiffs that those plots have been omitted from the plaint by the mistake of the typist.

After considering the submissions and the facts and circumstances of this case, it is evident that incorporation of new plots alongwith new facts by amendment in the plaint would definitely lead to de novo trial of the old suit of the year 1977. There is no reason assigned in the amendment petition which has precluded the plaintiffs from praying for amendment at the earlier stages of the suit and at least while examining their witnesses. The nature of the amendment sought for also demonstrates that substantially the claim has been

sought to be advanced over new plots but without any reason for omission of such claim at the time of filing of the suit or before leading the evidence. The learned counsel appearing on behalf of the respondents has pointed out that the plaintiffs have altogether examined 25 witnesses and the last opportunity was granted to the plaintiffs to finish /complete their evidence. In this backdrop, this Court is not inclined to interdict the impugned order, as the reasonings assigned by the learned court below in rejecting the prayer for amendment are not perverse or unreasonable.

The application is, accordingly, dismissed.

(V. Nath, J)

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