

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.830 of 2016**

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Gobardhan Rai & Ors

.... Appellant/s

Versus

Nawal Kishore Rai

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lala Sachindra Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 04-10-2016 Heard learned counsel for the petitioners and learned
counsel for the sole respondent.

Perused the impugned order dated 28.07.2016 passed by
Subordinate Judge-IV, Motihari in Title Suit No.57 of 2007
whereby the learned court below rejected the amendment
application filed by the defendants-petitioners for amendment in
the written statement.

From perusal of the impugned order, it appears that the
court below rejected the application for amendment filed by the
defendants-petitioners on the ground that the defendants-
petitioners are now trying to withdraw the categorical admission
made in the written statement. The admitted fact is that both the
parties have already closed their evidence and the suit is at the
stage of final argument. In fact no explanation has been given by
the defendants regarding due diligence required under the proviso

to Order 6 Rule 17 of the Code of Civil Procedure. Further the Hon'ble Supreme Court in the case of **Gautam Sarup Vs. Leela Jetly and Ors., (2008) 7 Supreme Court Cases 85** has held that a categorical admission cannot be resiled from. It is one thing to say that without resiling from the admission it would be permissible to explain under what circumstances the same had been made. An explanation can be offered provided there is any scope therefor. In the present case, by way of amendment the petitioners are trying to delete the portion of different paragraphs of the written statement wherein they admitted that the property was gifted to the sole respondent.

In my opinion, no case for interference in exercise of supervisory jurisdiction is made out. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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