

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10860 of 2014

=====

Ruby Devi Wife of Shri Subhash Prasad Singh Resident Village AND P.O. Sukki,
via - Patepur, District – Vaishali.

.... Petitioner/s

Versus

1. Babina Devi wife of Sri Manoj Thakur Resident of village - Nandni, P.S.
Mohiuddunagar, District – Samastipur.
2. Devendra Sharma.
3. Upendra Sharma Both sons of Sitaram Sharma.
4. Baijnath Sharma
5. Shambhu Sharma.
6. Bishwanath Sharma All 4,5 and 6 are sons of Baleshwar Sharma.
7. Brahamdeo Rai.
8. Rajdeo Rai Both sons of late Nandlal Rai.
9. Dasrath Rai.
10. Churaman Rai Both Sons of Siyalal Rai.
11. Sudhesh Rai @ Raniwala D/o Ram Sogarath Rai All are residents of village -
Sultanpur, Tola - Anandpur, P.S. Tajpur, District – Samastipur.
12. Smt. Rajana Devi W/o Babban Chaudhary.
13. Satyendra Chaudhary S/o Late Nand Kishore Choudhary.
14. Smt. Neelam Devi W/o Late Jai Chand Singh Resident of village - Amajadpur,
Pidhauri, P.S. Teghra, District - Begusarai at present village - Sultanpur Morva,
Anandpur, P.O. Morva Bazar, P.S. Tajpur, District – Samastipur.
15. Ranjeet Sharma.
16. Sanjeet Sharma Both Sons of Suresh Sharma resident of village - Morva Ray
Tole, P.O. Morve Bazar, P.S. Mushrigharari, District – Samastipur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Abhay Shankar Singh, Adv.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-07-2016

Heard Mr. Rakesh Chandra, learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of the respondent no. 1.

The petitioner is the plaintiff-respondent in the appeal in the court below and is aggrieved by the impugned order by which the learned court below has allowed the prayer for amendment in the memo of appeal as filed by the defendant-appellants.

The facts as appearing from the averments made in the application as well as the impugned order demonstrate that the suit for partition was filed in the year 2000. One of the material issues in the suit was as to whether the plaintiff was the adopted daughter of Chandrashekhar Mishra and his two wives Ramrati Devi (defendant no. 1) and Sundheshwari Devi. The suit was decreed and the appeal has been filed by the defendants. During the pendency of the appeal the prayer was made on behalf of the appellant for amendment in the memo of appeal for incorporating the ground that the learned trial court has erred in not allowing the petition filed by the defendant-appellant for calling for the relevant admission register for establishing her case denying the claim of the plaintiff regarding her status. The factual background also demonstrates that earlier the prayer of the defendant-appellant under Order 41 Rule 27 for adducing additional evidence in that regard was turned down and the

she filed C.W.J.C. No. 13484 of 2011 before this Court. By order dated 27.02.2012 (Annexure-1), this Court allowed the application and remanded the matter back to the learned court below for deciding the issue afresh. Thereafter, the defendant-appellant filed a petition for amendment as mentioned in the impugned order and the same has been allowed by the learned appellate court below.

Learned counsel for the petitioner has firstly submitted that the defendant-appellant has failed to establish due diligence which is sine qua non for allowing the prayer for amendment. It has been contended that in view of the decision of the Apex Court in the case of **Salem Advocate Bar Association, T.N. Vs. Union of India, 2005 (6) SCC 344** and even in accordance with earlier decisions of the Apex Court, before allowing the prayer for amendment the court is enjoined to record the finding regarding satisfaction on the point of due diligence of the party before allowing the prayer for amendment. It has been emphatically submitted that such finding has not been recorded by the learned court below and, therefore, the order is vulnerable.

Learned counsel appearing for the respondent no. 1, however, has submitted that such finding is implicit when the learned court below has come to the conclusion that the prayer for amendment made by the defendant-appellant was necessary for determination of

the crucial issue between the parties to the suit regarding the status of the plaintiff as daughter of Sundheshwari Devi. Learned counsel has also submitted that as the suit was filed in the year 2000, therefore, proviso of Order 6 Rule 17 added by Amending Act of 2002 would not be applicable.

After considering the submission and the perusal of the impugned order, it is manifest that the impugned order has been passed by the learned court below after concluding that in order to decide the material issue between the parties the prayer made by the appellant for amendment in the memo of appeal was fit to be allowed. It has also been taken into notice that earlier the petition for calling for admission register from the school was filed by the defendant in the suit but no order was passed on the said petition by the trial court. In view of the finding by the learned court below and also in view of the fact that the defendant-appellant had earlier filed the petition for calling for the admission register of the school but no order was passed by the trial court, this Court does not find that the learned appellate court below has acted with illegality or material irregularity in allowing the prayer for amendment as made.

This application, sans merit, is accordingly dismissed.

(V. Nath, J)

Devendra/-

U			
---	--	--	--