

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11393 of 2014

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1. Sri Brahmanand Jayaswal, son of Late Ramkhelawan Jayaswal, resident of village- Jairampur, Murliganj, Notified Ward No. 5, Police Station Murliganj, District- Madhepura

2. Sri Sri 108 Ramchandra Maharajji Sewayat, Sri Brahmanand Jayaswal, son of Late Ramkhelawan Jayaswal, resident of village- Jairampur, Murliganj, Notified Ward No. 5, Police Station Murliganj, District- Madhepura.... Petitioners

Versus

1. Chandrabhushan Choudhary

2. Indrabhushan Choudhary,

3. Krishnabhushan Choudhary,

4. Om Prakash Choudhary All resident of village- Madhepura, Ward No. 15, P.S. Madhepura, District- Madhepura

5. The State of Bihar, through the Collector, Madhepura Respondents

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Appearance :

For the Petitioner/s : Mr.Upendra Prasad, Adv.

Mrs. Veena Kumari Jaiswal, Adv.

For the Respondent No.5 : Mr. Yashraj Bardhan, A.C. to S.C.-2.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-08-2016

V.Nath, J.

Heard the learned for the petitioners and the

learned counsel for the respondent no.5.

The petitioners are aggrieved by the impugned order by which the learned court below has turned down the prayer for amendment made by the petitioners who are plaintiffs in the suit. It appears from the impugned order dated 19.05.2014 that the two petitions praying for amendment have been filed on behalf of the plaintiffs for amendment in the plaint. The first petition was filed on 17.04.2014 and the second petition was filed on 03.05.2014. The first petition dated 17.04.2014 as well as the second petition dated

03.05.2014 have been dismissed by the learned court below. The learned counsel for the petitioners during the course of submission has stated that the present application is being pressed only with regard to the petition dated 03.05.2014 which has been annexed as Annexure-1 to this application.

The learned counsel for the petitioners has submitted that the prayer for amendment in the petition (Annexure-1) is only formal one whereby the plaintiff has sought to change/modify some digits and such amendment will not change the nature and scope of the suit. It has been further argued that the learned court below has not applied the correct principles of law in turning down the prayer for amendment and has also wrongly observed that the petition is dismissed in the interest of justice. It has also been submitted by the learned counsel for the petitioners that the interest of justice requires that the prayer for amendment as prayed by the plaintiff should have been allowed.

The learned counsel appearing for the respondent no.5 has submitted that the trial of the suit was at the final stage where the final argument on behalf of the plaintiff was going on when the petition for amendment was filed. The learned counsel has pointed out this fact from the impugned order where the learned court below has recorded the stage of the suit. The submission made on

behalf of the respondent no.5 is that the learned court below has committed no error of jurisdiction and illegality in the same.

After considering the submissions and perusal of the impugned order, it is manifest that the prayer for amendment has been made by the plaintiffs at the stage when the suit has been posted for final argument. Even though the amendment might be a formal one but when it involves changes in averment of facts the necessity for granting opportunity to the defendants to lead evidence in rebuttal definitely arises. As found in the impugned order that there is no explanation on behalf of the plaintiffs establishing due diligence in not preferring the amendment at the earlier stage, this Court does not find that the learned court below has committed any illegality or material irregularity in turning down the prayer for amendment. This Court is therefore not inclined to interfere in the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India.

This application is, accordingly, dismissed.

However, the petitioners shall be at liberty to question the legality and validity of the impugned order under Section 105 C.P.C , if such occasion arises.

(V. Nath, J)

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