

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12145 of 2014

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Mostt. Gyatri Kuer, Wife of Late Jagdish Prasad Singh, Resident of Village - Chandanpura, P.O. - Chandanpura, P.S. - Tilauthu, District - Rohtas at Sasaram

.... Petitioner

Versus

1. Hansraj Kumar, Poshak wo Prachalit, father Late Jagdish Singh @ Jagdish Prasad Singh wo natural father Late Jokhan Prasad Singh @ Biran Singh, Resident of Village and P.O. - Chandanpura, P.S. - Tilauthu, District - Rohtas
2. Mulkaraj Singh Poshak wo Prachalit father Late Jagdish Prasad Singh wo natural father Late Jokhan Prasad Singh @ Biran Singh, Resident of Village and P.O. - Chandanpura, P.S. - Tilauthu, District - Rohtas
3. Gita Devi, Wife of Ramchandra Singh @ Munna Jee, daughter of Late Jagdish Prasad Singh, Krishna Khad Bhandar, Village - Dhangai Tola, Natwar Road, P.O. and P.S. Bikramganj, District - Rohtas
4. Sarita Devi, Wife of Krishna Kumar Singh, Resident of Village - Surajpura, P.O. - Surajpura, P.S. - Surajpura, District - Rohtas
5. Ramashish Singh, Son of Late Bijadhar Yadav, Resident of Village and P.O. Chandpura, P.S. Tilauthu, District - Rohtas
6. Hareram Singh
7. Raja Ram Singh, Both Sons of Late Sheetal Singh, Resident of Village and P.O. Bhadokhara, P.S. - Tilauthu, District - Rohtas
8. Mostt. Shanti Kuer, Wife of Late Lakshman Singh, Resident of Village - Durgapur, P.O. - Nawadih, P.S. - Indrapuri, District - Rohtas
9. Mostt. Atawaria Kuer, wife of Late Basant Singh, Daughter of Late Shree Kishun Singh
10. Deora Singh
11. Rabindra Singh
12. Haridwar Singh
13. Radhey Shyam Singh, Sons of Late Shree Kishun Singh, All resident of Village and P.O. Chandpura, P.S. - Tilauthu, District - Rohtas
14. Dewanti Devi, Wife of Ramadhar Singh, Resident of Village and P.O. - Barun, Mohalla - Kumharar Toli, P.S. - Barun, District - Aurangabad
15. Prabhawati Devi, Wife of Jitendra Singh, Resident of Village - Pokharaha, P.O and P.S. - Barun, District - Aurangabad
16. Lilawati Devi, Wife of Binod Singh, Resident of Mohalla - Jaykhi Bigha Dehri, P.O. and P.S Dehri, District - Rohtas
17. Chandan Kumar
18. Nandan Kumar, Both Sons of Late Basant Singh, Resident of Village and P.O. Chandpura, P.S. Tilauthu, District - Rohtas
19. Malwant Yadav, Son of Late Bhikhari Yadav, Resident of Village and P.O. Chandpura, P.S. Tilauthu, District - Rohtas

.... Respondents

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Appearance :

For the Petitioner : Mr. Ras Bihari Thakur, Advocate
For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 19-08-2016

Heard Mr. Ras Bihari Thakur, learned counsel appearing for the petitioner.

The legal sustainability of the impugned order by which learned court below has allowed the prayer for amendment in the plaint of the plaintiff has been questioned in this application under Article 227 of the Constitution of India.

The learned counsel for the petitioner has submitted that the amendment as sought by the plaintiff whereby description of the parentage of the defendant no. 1 has been sought to be changed as “adopted son” of Mulkraj Singh, will change the nature of the suit. It has been submitted that originally plaintiff in the plaint has stated that the defendant no. 1 was “Poshak wo Prachalit, son of Mulkraj Singh” but now after filing of the written statement by the defendant no. 1 the said portion has been sought to be amended as “adopted son” because the defendant no. 1 in his written statement has asserted himself to be the “adopted son of Mulkraj Singh”. It has been contended that the present petitioner, who is defendant no. 2 of the suit and widow of Jagdish Prasad Singh, has been contesting the said case of adoption of defendant no. 1 by Mulkraj Singh and, therefore, the amendment will cause prejudice to her case. It has, however, been accepted that the trial has not commenced in the suit.

After considering the submission and perusal of the impugned order as well as materials on record, it is evident that the suit is still at the initial stage where the trial, according to the learned counsel for the petitioner, still has not commenced. The purpose of amendment of pleading, as envisaged under Order 6, Rule XVII of the Code of Civil Procedure is clearly to allow all such amendments, which, in the opinion of the Court, are necessary for complete and effective adjudication of the issues arising between the parties in the suit. It is evincible in the present case that the issue of adoption of defendant no. 1 by Mulkraj Singh as asserted by the defendant no. 1 and denied by the defendant no. 2, is already there in the suit where the parties are still to lead evidence. Moreover, the nature of the suit is partition suit where all the parties in the suit have the status of plaintiff and defendant, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The present application is, accordingly, dismissed.

(V. Nath, J.)

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