

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.9167 of 2014**

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Barmeshwar Yadav @ Barmeshwar Nath Yadav Son of Late Nathuni Yadav  
resident of village Sovan, P.O. Sovan, P.S. Krishna Brahma, District - Buxar.

.... .... Petitioner.

Versus

1. Bhrigunath Prasad
2. Singhasan Prasad.
3. Jawahar Prasad All are sons of Late Baiju Prasad
4. Hiramani Devi
5. Punam Devi
6. Aarti Devi All are daughters of Jawahar Prasad. All are residents of village and Post Sovan, P.S. Krishna Brahma, District - Buxar.
7. Khedaru Mahto Son of Bachan Mahto.
8. Baidania Devi wife of Khedan Mahto.
9. Shriram Mahto Son of Khedasu Mahto
10. Most. Kamla Devi wife of Late Kamla Prasad Singh resident of village and Post Sovan, P.S. Krishna Brahma, District - Buxar.
11. Shri Ram Yadav Son of late Subhag Yadav
12. Jaglu alias Dharm Raj Yadav Son of Late Tengari Yadav.
13. Ram Chandra Yadav Son of Late Chalu Yadav.
14. Sitaram Yadav Son of Late Ghurul Yadav All are residents of village and Post Sovan, P.S. Krishna Prahma, District - Buxar.

.... .... Respondents.

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**Appearance :**

For the Petitioner/s : Mr. Sunil Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 05-05-2016**

**V.Nath, J.**

Heard the learned counsel for the petitioner.

By filing this application under Article 227 of the Constitution of India, the defendant-petitioner in the suit has questioned the legal sustainability of the impugned order by which the amendment in the plaint has been allowed.

It has been submitted by the learned counsel for



the petitioner that the plaintiff has filed the T.S.No.148/2004 in which the present petitioner was earlier impleaded only as a proforma defendant (defendant 3<sup>rd</sup> set). It has been further submitted that in various averments in the plaint also it has been stated that the status of defendant 3<sup>rd</sup> set is only as a proforma defendant and no relief is being claimed against him. It has been pointed out that the plaintiffs after expiry of 9 years filed a petition for amendment in the plaint whereby they sought to alter the earlier statements with regard to the defendant-petitioner and to change the status of the defendant-petitioner from being proforma defendant to a contesting defendant claiming relief against him also. It has, therefore, been canvassed by the learned counsel for the petitioner that the learned court below has committed illegality and material irregularity in allowing the prayer without considering the fact that the proposed amendment was simply an abuse of the process of the court as it involves the total alteration of the earlier stand by the plaintiff and change of the nature and scope of the suit in the manner as abovementioned.

After considering the submissions and the materials on record, it is apparent from the plaint (Annexure-2) that the present petitioner has been impleaded as defendant no.6 in the category of defendant 3<sup>rd</sup> set. In the averments made in the paragraph-12 onwards the plaintiff has come out with a clear case that no relief



is being claimed against the defendant 3<sup>rd</sup> set and they have also been exempted from contesting the suit by filing a written statement if they do not contest the claim of the plaintiff. Subsequently, however, by filing the proposed amendment the plaintiff has sought to delete paragraph nos.12 to 14 of the plaint and to substitute the same by addition of other statements as made in the amendment petition. The learned court below by the impugned order has observed that in order to decide the dispute completely and effectually the amendments are necessary and has allowed the same after imposing cost on the plaintiff.

The principles governing the amendment in the pleadings as envisaged in Order 6 Rule 17 C.P.C. has been elaborately dealt with by the apex court in the case of ***Rajesh Kumar Vs. K.K.Modi, (2006) 4 SCC 385*** and it has been ruled that all the amendments which are required for complete and effective adjudication of the dispute between the parties must be allowed. The same principles have been reiterated in ***North Eastern Railway Admn. Vs. Bhagwan Das, 2008 (8) SCC 511*** observing that “amendments should be refused only when the other party cannot be placed in the same position as if the pleadings had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.” It is thus clear that if a fresh suit would

be maintainable with the pleadings sought to be incorporated by way of amendment, there is no reason to refuse the amendment of the pleading in the suit which is pending.

In the facts of the present case, the effect of the amendment would be only to make the defendant 3<sup>rd</sup> set also in the category of contesting defendants for the relief prayed by the plaintiffs in the suit. It is not the case of the petitioner that a fresh suit by the plaintiff against the defendant 3<sup>rd</sup> set for the relief claimed by the amendment would be barred. It is, therefore, all the more evident that the proposed amendment would only result in the final determination of the dispute with regard to the suit land between the parties to the suit. This Court therefore is not inclined to align with the submission on behalf of the petitioner that the plaintiff ought to have been directed to file another suit against the defendant 3<sup>rd</sup> set. This Court does not find any error of jurisdiction or illegality in the impugned order requiring interference in exercise of jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

**(V. Nath, J)**

Nitesh/-

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