

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1378 of 2014

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Rameshwar Nath Tiwari S/O Late Gupetashwar Nath Tiwari @ Bulli Tiwari
Resident of Village- Dumaraon, District-Buxar.

.... Petitioner/s

Versus

1. Rahul Tiwari S/O Sidhanath Tiwari.
2. Paras Nath Tiwai S/O Late Gupteshwar Nath Tiwari Resident Of Village-
Dumaraon, P.S- Dumaraon, District- Buxar.
3. Parameshwar Nath Tiwari S/O Late Gupteshwar Nath Tiwari @ Bulli Tiwari
Resident of Village- Dumaraon, District-Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kritya Nand Jha, Adv.

For the Respondent/s : Mr. Anil Kumar Roy, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-11-2016

Heard learned counsel for the parties in the admission
matter as well as in the interlocutory application (I.A. No. 6735 of
2016).

Learned counsel for the petitioner prays to strike off the
name of the respondent no. 2 in view of the office report that he is
dead. Prayer is allowed.

This application has been filed by the plaintiff-petitioner
against the order by which the prayer for amendment in the plaint has
been turned down by the learned court below.

Earlier the notice was issued to the respondents and
further proceeding of the suit was stayed by order dated 10.12.2015.



The respondent no. 1, after appearance, has filed the interlocutory application praying for vacating the order of stay as granted by this Court.

The matrix of facts discloses that the suit was filed by the plaintiff-petitioner praying for declaring the sale deed executed by the defendant no. 2 in favour of defendant no. 1 as forged and fabricated. The suit proceeded and eventually the parties led their evidence and completed the same. At this stage, the petition was filed by the plaintiff-petitioner praying for amendment in the plaint. The learned court below, after considering the submissions, has rejected the said prayer.

From the copy of the plaint which has been annexed as Annexure-1, it transpires from paragraph-3 that the plaintiff has made the categorical statement that there had been partition on 10.10.2002 in between the four brothers and in 'yadast batwara' it was stated that Paras Nath Tiwari (defendant no. 2) was unmarried and was a man of weak intellect and therefore all the brothers would continue to serve him and after his death his property would be distributed among all the brothers but he would have no right to transfer the land. It would be seemly to notice here that the said Paras Nath Tiwari (Defendant No. 2) had sold the land to the defendant no. 1 by sale deed dated 10.10.2008 which has been questioned in the suit. By amendment, the



plaintiff now wants to introduce the fact that the property which has been transferred by the defendant no. 2 Paras Nath Tiwari in favour of defendant no. 1 was the property allotted to the plaintiff in the aforesaid partition. This fact is apparently inconsistent with the statement made in paragraph-3 of the plaint and clearly amounts to introducing a new fact which would result in the *de novo* trial of the suit as the defendant would have to be given opportunity to file additional written statement and lead evidence. The learned court below has come to the conclusion that in view of the proviso to Order 6 Rule 17 C.P.C. as introduced by amendment therein, no prayer for amendment in the pleading can be allowed after the commencement of the trial of the suit in absence of due diligence. It is evincible from the nature of the amendments as prayed by the plaintiff that they are demonstrably not intended for corrections of the typing mistakes . As such the element of due diligence is completely wanting on the part of the plaintiff. The decision relied upon on behalf of the petitioner in the case of **J. Samuel Vs. Gattu Mahesh, 2012(1) P.L.J.R. SC 412**, in fact, supports the contention of the respondents as well as the view taken by the learned court below in the impugned order. As such, this court is not inclined to interfere in the impugned order.

The application is, accordingly, dismissed.

However, it is observed that the petitioner shall be at



liberty to raise their objections, if such occasion arises, in accordance
with law under Section 105 C.P.C.

(V. Nath, J)

Devendra/-

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