

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9848 of 2014

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1. Fakirchand Prasad @ Fakirchand Yadav, Son of Late Sita Ram Rai, Resident of Mohalla- Sipara New Etwarpur, P.sS.- Phulwari, District- Patna

.... Petitioner/s

Versus

1. Nilu Devi, wife of Late Raj Kumar @ Kebi, Resident of Mohalla- Sipara New Etwarpur, P.sS.- Phulwari, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rabindra Griyaghey & Mr. Sunil Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-06-2016

Heard learned counsel for the petitioner.

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

3. Learned counsel for the petitioner has submitted that the plaintiff-respondent is the daughter-in-law of the present petitioner and the husband of the present plaintiff-petitioner (son of the petitioner) had already been granted more than the share in the property much before. It has also been pointed out by the learned counsel for the petitioner that later on after the grant of share in the family property, the plaintiff-respondent murdered her husband for



which a criminal trial is going on. It has further been submitted by the learned counsel for the petitioner that ultimately there had been a suit for declaration of title over the suit property and by the impugned amendment a prayer was made for partition of the suit property claiming $1/3^{\text{rd}}$ share therein. It has, however, been accepted that on the date when the prayer for amendment was made, the trial of the suit had not commenced. It has been emphasized by the learned counsel for the petitioner that the plaintiff-respondent has no case in the suit claiming any share in the suit property in view of the fact that her husband had already been given much more than his share in the suit property in the year 2003 itself. It has also been contended that the written statement had already been filed in the suit when the prayer for amendment was made.

4. Having considered the submissions and perusing the materials on record as also the impugned order, it is manifest that admittedly the trial had not commenced when the prayer for amendment in the plaint was made by the plaintiff. Initially, the suit was for declaration of title and possession which was resisted by the defendant by filing written statement pleading that the husband of the plaintiff respondent was already given much more share in the property. Incorporation of the relief in the plaint by the plaintiff, in no manner, affects the defendants' case regarding non entitlement of the

plaintiff-respondent of any more share in the suit property. However, this issue has to be decided on the basis of evidence to be adduced on behalf of the parties. As the trial has not commenced when the prayer for amendment was made, this Court is not in a position to find that any prejudice has been caused by the impugned order.

5. The learned counsel by referring to the decision of the Apex Court has submitted that if the amendment does change the nature of the suit it should not be allowed. There is no dispute about the proposition of law. But in the present case if the prayer for amendment adding relief for partition is allowed, it will not materially change the nature of the suit.

6. This Court is, thus, not inclined to allow this application. However, the petitioner, if so advised, shall be at liberty to make a prayer for filing additional written statement and if such prayer is made, the learned court below will pass appropriate order in accordance with law.

(V. Nath, J)

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