

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10907 of 2014

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Basistha Thakur Son of Late Tunni Thakur Resident of Mohalla - Gangti, P.S.
Mojahidpur, P.O. Mirjanhat, District – Bhagalpur.

.... Petitioner/s

Versus

1. Ramani Devi Wife of Late Jagdish Thakur
2. Binod Thakur Son of Late Jagdish Thakur
3. Bida Devi Wife of Late Maini Thakur
4. Mantu Thakur Son of Late Maini Thakur
5. Dahu Thakur Son of Late Maini Thakur
6. Maru Thakur Son of Late Maini Thakur All are resident of Mohalla - Gangti,
P.S. Mojahidpur, P.O. Mirjanhat, District – Bhagalpur. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Tiwary, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-07-2016

Heard Mr. Tiwary, learned counsel for the petitioner.

Questioning the legal sustainability of the impugned order by which the petition for amendment in the written statement filed by the petitioner has been turned down, the present application under Article 227 of the Constitution of India has been filed.

From the facts apparent from the petition and from the submissions on behalf of the petitioner, it is manifest that the suit was filed by the plaintiff-respondent for partition of the suit property. The defendant-petitioner appeared and filed his written statement. The trial commenced and thereafter the defendant no. 1 has also been examined as witness in the suit. At that stage, a petition for amendment was

filed on behalf of the defendant. The trial court has turned down the prayer of the defendant-petitioner for amendment on the ground of want of due diligence on the part of the petitioner who prayed for amendment after the commencement of the trial.

Learned counsel for the petitioner has not disputed the fact that the trial has commenced but has emphasized that the nature of the amendment is only formal. It has also been submitted that the trial court has committed material irregularity in turning down the prayer for amendment.

After considering the submissions and perusal of the impugned order, it is apparent that the trial of the suit has commenced long back and even the defendant no. 1 has also been examined as witness in the suit. It also appears from the impugned order that if the prayer for amendment is allowed it will cause prejudice to the case of the plaintiff. This Court does not find any sufficient reason to intervene in the impugned order and reverse the conclusion.

The application is, accordingly, dismissed. However, the petitioner shall have the liberty to take appropriate objection if permissible in accordance with law under Section 105 C.P.C., if such occasion arises.

Devendra/-

(V. Nath, J)

AFR/NAFR	
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