

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12127 of 2014

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1. Ramanand Sah s/o Late Sita Ram Sah
 2. Netalal Prasad
 3. Tarkeshwar Prasad
 4. Chandeshwar Prasad All three s/o Shri Ramanand Sah All r/o Village Giwadhar, P.S.- Harsidhi, District East Champaran.

.... Petitioner/s

Versus

1. Smt. Indu Devi w/o Shri Harinam Prasad
2. Shri Harinam Prasad s/o Late Khedu Sah Both r/o Banjariya, P.S.- Banjariya, District East Champaran
3. Shakuntala Devi d/o Mohan Prasad w/o Rananand Sah
4. Mohan Prasad s/o Late Paras Sah Both r/o Village Govindapur, P.S. Harsidhi District East Champaran
5. Nagendra Prasad
6. Lallu Prasad
7. Ramchandra Prasad
8. Ghunli Prasad
9. Kanhaiya Prasad All s/o Late Chandrika Prasad
10. Most. Geeta Devi w/o Late Yogendra Prasad
11. Sanjay Prasad s/o Late Yogendra Prasad
12. Mostt. Meera Devi w/o Late Mahendra Prasad
13. Rohit Kumar minor s/o Late Mahendra Prasad represented through Mostt. Meera Devi, Mother and the nearest relative
14. Khushbi Kumari minor d/o Late Mahendra Prasad represented through Mostt. Meera Devi, Mother and the nearest relative All r/o Village Ghivadhhar, P.S. Harsidhi District East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Patanjali Rishi, Adv.

For the Respondent/s : Mr. Sanjeev Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH



ORAL JUDGMENT

Date: 19-09-2016

Heard learned counsel for the parties.

The defendants in the suit are the petitioners in this application assailing the impugned order by which the learned court below has allowed the prayer for amendment in the plaint as prayed by the plaintiffs.

Mr. Rishi, learned counsel for the petitioners has submitted that the amendment as sought for by the plaintiffs has been done belatedly and only at the stage when already eight witnesses on behalf of the plaintiffs have been examined and cross-examined by the defendants. It has been further submitted that the defendants would have to again pray for recall of the witnesses for cross-examination after filing additional written statement, if so advised. Learned counsel has put emphasis on the proviso under Order VI Rule 17 C.P.C. in order to persuade this Court to take the view that the amendment as prayed ought not to have been allowed by the court after commencement of trial.

Learned counsel for the plaintiff-respondents has supported the impugned order but has not denied the fact that the amendment has been prayed at the stage when already eight witnesses have been examined on behalf of the plaintiffs.



After considering the submissions and the materials on record, it is evident that the suit has been filed for declaration of title and recovery of possession. The basis of the claim of the plaintiffs over the suit land is on the alleged partition and allotment of the land to the father of the vendor of the plaintiffs. Though the plaintiffs in his plaint has stated regarding the said partition but by the proposed amendment, the plaintiffs has sought to elaborate the said fact of partition. It is, thus, evincible that the amendment will not change the nature of the suit and is demonstrably in the nature of elaboration of the fact already stated. However, the fact also cannot be ignored that the plaintiffs have not acted diligently as they had earlier also prayed for amendment in the plaint pertaining to other matters but omitted to seek the present amendment. This Court is conscious of the position after addition of the proviso to Order VI Rule 17 C.P.C. However, in the facts of the case, after the court below has allowed the amendment holding the amendment to be only elaboration of the fact already stated, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order. However, in order to balance the equity the amount of cost as awarded by the learned court below upon the plaintiffs is enhanced to Rs. 5000/- which shall be a condition precedent for the plaintiffs to proceed further with the suit along with the amendment.



The present application is, accordingly, dismissed with
the aforesaid direction and modification.

(V. Nath, J)

Devendra/-

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