

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14021 of 2014

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Harishendra Singh @ Haris Chandra Singh Son of Late Subh Narayan Ojha @
Subh Narain Singh Resident of village & Post Lagama, P.S. Dumra, District -
Sitamarhi

.... Petitioner

Versus

1. Bechhar Sahni Son of Late Aklu Sahani
2. Most. Indrasan Devi Wife of Late Taken Sahani
3. Sahdeo Sahani Son of Late Taken Sahani
4. Ram Nandan Sahani Son of Late Taken Sahani
5. Bigna Sahani Son of Late Aklu Sahani All Resident of village & Post Legana,
P.S. Dumra, District - Sitamarhi
6. Jagataran Devi D/o Late Aklu Sahani Wife of Yadu Nandan Sahani Resident of
village - Basantpatti, P.O. Basantpatti, P.S. Purnahiya, District - Sheohar
7. Ram Kishore Singh Son of Late Subha Narayan Ojha @ Subh Narain Singh
Resident of village & Post Lagauna, P.S. Dumra, District - Sitamarhi

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 03-10-2016

Heard Mr.Thakur, learned counsel appearing for
the petitioner.

The plaintiff-appellant is the petitioner in this
application, which has been filed for quashing the impugned order by
which the appellate court below has declined the prayer on behalf of
the plaintiff for amendment in the plaint at the appellate stage.

Untroverted matrix of facts is that during the
pendency of the suit filed by the plaintiff for declaration of title and
recovery of possession, a pleader commissioner was appointed on the



payer of the plaintiff. The said pleader commissioner submitted his report and no objection was filed by the plaintiff or the defendants against the said report. The hearing of the suit proceeded and the suit was decreed in part, granting the declaration of title to the plaintiff but no prayer for recovery of possession was allowed. The plaintiff thereafter filed the appeal. At the stage of argument, petition was filed on behalf of the plaintiff-appellant praying for amendment in the plaint in view of the report of the pleader commissioner. The appellate court below after coming to the finding that the amendment as prayed is not necessary for determining the real controversy between the parties has turned down the said prayer.

Mr. Thakur, learned counsel appearing for the petitioner has submitted that the proposed amendment is, in fact, based upon the report of the pleader commissioner, and as the lis is there, the court ought to have allowed the prayer as made on behalf of the plaintiff-appellant. The learned counsel has also submitted that the petitioner is ready to pay the cost to the defendant. During the course of submission, however, it has not been disputed that if the amendment, as proposed, is allowed it could lead to de novo trial of the suit as the defendant would be entitled to file additional written statement and lead evidence as well.



After considering the submissions and perusal of the impugned order, it transpires that the prayer for amendment by the petitioner has been made in the appeal at the stage when the argument was going on. As it further transpires from the impugned order the petitioner-appellant by the proposed amendment wanted to bifurcate the suit land on the basis of the map submitted by the survey knowing pleader commissioner. The learned appellate court below has come to the conclusion that the proposed amendment is not necessary for determining the real controversy between the parties. This Court, thus, is not inclined to interfere in the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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