

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3392 of 2016

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Kamal Mahto & Anr

.... Petitioner/s

Versus

Nand Lal Mahto

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Kumar Shrivastva

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

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15-07-2016

Heard learned counsel Mr.Akhileshwar Kumar

Shrivastva for the petitioners.

Perused the order passed by the learned Subordinate Judge, Narkatiaganj (West Champaran) in Partition Suit No.234 of 2001 whereby the court below rejected the amendment application filed by the defendants-petitioners for amendment in the written statement.

It appears that the partition suit was filed by the plaintiff-respondent. The defendants filed written statement contending inter alia that there had already been partition between the parties. Now question to be decided in partition suit is whether there had been partition or no partition. If it is held that there had been no partition as alleged by the defendants then naturally the plaintiff's suit will be decreed. The plaintiff adduced evidence in support of the case and the evidence of the plaintiff has already been closed. Thereafter the amendment application has been filed

praying for addition of some new fact to the effect that some properties, which are either in the name of the plaintiff or in the name of the defendants, have been left out for partition. The court below by the impugned order has rejected the application.

Admittedly the evidence of the plaintiff has already been closed. It is also admitted fact that the petitioners, who are defendants in partition suit, have not filed counter claim claiming partition of any left out property. Their case is also not that the suit is bad for partial partition. They came to the Court with clear case that there had already been partition between the parties. Now, therefore, if the amendment application is allowed at this stage after closure of evidence of the plaintiff then naturally to rebut this case the plaintiff will be allowed to adduce further evidence and in my opinion it will amount de novo trial. Further the amendment sought for in the written statement is not relevant for deciding the question as to whether there had been partition of the suit property or not.

In my opinion, therefore, it is not a case for interference in supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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