

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15215 of 2015

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1. Pradip Kumar Sinha @ Sahanji S/O Late Ram Naresh Prasad, resident of village/P.O. Ratanpur, P.S. Ara Muffasil, District- Bhojpur at present residing at Mohalla- Mahadeva Ara (Saheli Srinagar Gali), P.S. Ara, Town, P.O. Ara, District- Bhojpur.

.... Petitioner/s

Versus

1. Krishna Prasad, son of Late Ram Naresh Prasad, resident of Mohalla Vastu Vihar, Chirachas, Sri Ram Housing Colony, Project No,1 Bokaro, P.S./ P.O. Chas, distt. Bokaro
2. Pushpa Devi W/o Narbadeshwar Prasad and D/O Late Ram Naresh Prasad, resident of village- Sultanpur, P.O. Sonpur, P.S. Jagdishpur, Distt. Bhojpur.
3. Lalita Devi @ Kanak Devi W/O Sidheshwar Prasad @ Chinganji resident of mohalla Sitaltola, Ara, Ara Town, P.O. Ara, District-Bhojpur.
4. Anil Kumar Sahay
5. Dilip Sahay
6. Suniljee Sahay
7. Sudhirjee Sahay All sons of Gopalganj Sahay, resident of village- Ratanpur, P.O. Ratanpur, P.S. Ara Moffasil, District- Bhojpur, at present residing at Mohalla M.P. Bagh Kamala Hata Old Police Line, Arrah, P.S. Arrah Town, P.O. Arrah, District- Bhojpur.
8. Dr. Mukhteshwar Prasad Sinha alias Lallanjee son of Lali Baijnath Jee Sahay, C/O Sri Jagdish Prasad Sinha, Jagdish Niwas, Janta Road, New Yarpur, Patna P.O. G.P.O Distt. Patna- 800001.
9. Dr. Lalit Prasad Sinha @ Lalbabuji son of Late Baijnath ji Sahay, resident of Mohalla Vinoba Nagar, Patna Road No.1, Postal Park Chiraiyatar, Distt. Patna.
10. Priti Ranjan Prasad Sinha, alias Sonajee son of Late Baijnath Jee Sahay, resident of Mohalla- Yarpur, Baijnath Niwas, Post G.P.O., Distt. Patna- 800001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rama Kant Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 27-01-2016 Heard learned counsel, Mr. S. N. Singh, appearing for

the petitioner as well as learned counsel, Mr. J.K. Verma,

appearing for the respondents.



This application, under Article 227 of the Constitution of India, has been filed by the plaintiff-petitioner for setting aside the order dated 01.07.2015 passed by the 3rd Additional District Judge, Bhojpur, Arrah, in T.S. No. 4 of 2014 arising out of Probate case No. 44 of 1994, whereby the learned court below rejected the amendment application.

The learned counsel for the petitioner submitted that although till today, no issues have been framed and the amendment application was filed prior to filing the written statement, the court below has rejected the amendment application on the ground that it is malafide and withdrawal of admission and that it will amount to over holding the plaint.

On the other hand, learned counsel for the respondents submitted that the amendment sought for is not necessary and it will never assist the court for deciding the real question i.e. the genuineness of the Will in question. In probate case, the question of title cannot be decided and, therefore, the learned court below has rightly rejected the amendment application.

So far the submission of learned counsel for the respondents is concerned, it may be mentioned here that those matters can be gone at the time of final hearing of the suit itself.

So far withdrawal of admission is concerned, it is admitted fact that still issues have not been framed, therefore, there is no question of prejudice to the other side arises. So far mala-fide is concerned, from perusal of the order, it appears that the court below has only use this word '*malafide*' as from the facts, stated above, it is clear that prior to filing the written statement, the application for amendment was filed. The amendment application has been annexed as Annexure-3 to this writ application. From perusal of the same, it appears that only corrections are sought to be made in the schedule of the plaint.

In such view of the matter, the court below has not exercised jurisdiction vested by law and accordingly, rejected the application for amendment. Thus, this writ application filed by the petitioner is, hereby, allowed and the impugned order is set aside and the amendment application filed by the petitioner is, accordingly, allowed.

The respondents may, if so advised, file written statement to the amended part only.

(Mungeshwar Sahoo, J)

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