

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9532 of 2016

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Shiv Pujan Rai S/o Late Baribansh Rai, Resident of Village Barka Nuwab,
P.S. District-Buxar at present residing in Town Block Road Nai Bazar,
Keshri Nandan Nagar, New ward No. 4 P.S. District-Buxar.

.... Petitioner

Versus

Shila Rai W/o Ashok Rai, Resident of village-Khairbari, P.S. Bhawarcol,
District-Gajipur (U.P.)

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Ashwini Kumar Rai

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 01-08-2016

Heard Mr. Ashwani Kumar Rai, learned counsel for
the petitioner.

It appears that partition Suit was filed by the
plaintiff-respondent. Thereafter amendment application has been
filed by the plaintiff for inclusion of some more joint family
property. The defendant-petitioner filed objection to the said
application alleging that those properties sought to be included are
the self acquired property of the petitioner. Court below by the
impugned order dated 07.09.2015 passed by the learned Sub
Judge-II, Buxar has held that this question can be decided only
after the evidences of the parties and the same shall be decided at
the time of the final adjudication of the case.

So far as the question as to whether the property is

self acquired property or it belonged to the joint family property and the plaintiff has a share in the suit property is a matter relating to merit of the amendment application.

The Hon'ble Supreme Court in 2008(17) Supreme Court Cases 671 has held the merit of the amendment application can not be looked into at the time of consideration regarding whether the application for amendment is to be allowed or not.

Therefore, in my opinion, the learned court below has rightly rejected the amendment application and there by no prejudice is caused to the present petitioner as his evidence is yet to start.

In the result, I find no reason to interfere with the impugned order and accordingly, this Civil Misc. Application is dismissed.

(Mungeshwar Sahoo, J)

siddharth/-

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