

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12529 of 2014

- =====
1. Abdul Hafiz, Son of Late Jamun Mian
 2. Bibi Zubaida Khatoon, Wife of Abdul Hafiz, Both are residents of Village - Bhabanandpur - Shikraula, Pergana - Malki, P.S. and Anchal - Birpur, District - Begusarai

..... Plaintiffs Petitioners

Versus

1. Md. Allauddin, Son of Late Wahid Mian
2. Abdul Hafiz, Son of Kabir Mian
3. Zeyauddin, Son of Kabir Mian
4. Mozamuddin, Son of Zaffar Ali, All are residents of Village - Shikraula (Bhabanandpur) Pergana - Malki, P.S. - Birpur, District – Begusarai

..... Defendants-1st Party-Respondents 1st Party

5. Mohd. Rabban, Son of Mohd. Raheem, resident of Village - Bhabanandpur - Shikraula, Pergana - Malki, P.S. and Anchal - Birpur, District - Begusarai

..... Defendant 2nd Party Respondent 2nd Party

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Appearance :

For the Petitioners : Mr. Amresh Kr. Verma, Advocate

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-09-2016

Heard Mr. Amresh Kumar Verma, the learned
counsel appearing for the petitioners.

The legal sustainability of the impugned order, by
which the learned court below allowed the amendment in the 7th line
of the written statement, as prayed, by the defendant nos. 1, 2 and 4
on whose behalf the written statement was filed, has been questioned
by filing this application under Article 227 of the Constitution of
India.

The matrix of facts demonstrates that the suit has
been filed by the plaintiff for declaration of title over the suit land and



further for declaration that the order passed under Section 145 of the Code of Criminal Procedure between the parties was not a valid order. In the said suit, there are two sets of defendants. The defendant nos. 1 to 4 were described as defendant 1st set whereas defendant no. 5 alone was described as defendant 2nd set. It further transpires that the defendant nos. 1, 2 and 4 filed their written statement and defendant no. 3 filed his separate written statement. It is not in dispute that no written statement was filed in the suit by defendant no. 5 who was arrayed as defendant 2nd set. During the pendency of the suit, a prayer for amendment was made on behalf of the defendant nos. 1, 2 and 4 for substituting the word defendant “second party” by the word defendant “first party” in 7th line of paragraph 13 of the written statement filed by them. The said prayer for amendment has been allowed by the impugned order.

The learned counsel for the petitioners has submitted that the amendment has been preferred at the stage when the suit has been posted for argument and by the amendment the admission made by the defendants has been sought to be taken away. It has also been contended that the defendant no. 3 who has filed similar written statement has not prayed for any amendment in his written statement and on this base the argument has been advanced that the proposed amendment is mala fide in nature. It has been, however, accepted by

the learned counsel by placing paragraph 13 of the written statement filed by the defendant nos. 1, 2 and 4 that in the previous part of the same sentence the averment has been made that defendant 1st set has purchased the land from Survey Plot No. 1260.

After considering the submissions and perusal of the materials on record, it is manifest from the averments made in paragraph no. 13 that those averments relate to the purchase of land of Plot No. 1260 and possession on that basis over the part of the purchased land. An admission in order to be effective and binding is required to be read in whole and further the statement in order to qualify as admission must be clear and unambiguous. From the reading of the statement made in paragraph 13 in its entirety, it does not appear that in its later part the words defendant “second party” has been knowingly and deliberately written in continuation with the previous part and there is, thus, no scintilla of doubt that those words “defendant second party” in place of the words “defendant first party” have been inadvertently typed. The submission that since the defendant no. 3 who has filed his separate written statement has not preferred any amendment in his written statement and, therefore, the present amendment should be refused has failed to impress this Court as bereft of legal reasoning.

For the aforesaid reasons, this Court is not inclined to

invoke the jurisdiction under Article 227 of the Constitution of India
for interdicting the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J.)

Kundan

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	