

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12824 of 2014

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1. Md. Karimullah @ Karmullah son of Late Ahmad Ali.
 2. Amarullah son of late Ahmad Ali Both are residents of village - Semra, P.O. Sagardina, P.S. Chiraiya, District - East Champaran.
 3. Rakiba Khatoon wife of Shekh Majid Resident of village - Semra, P.O. Sagardina, P.S. Chiraiya, District - East Champaran.

.... Petitioner/s

Versus

1. Jakir Hussain son of Late Shaukat Ali
2. Taufikur Rahman son of Late Jainul Haque
3. Atikur Rahman son of Late Jainul Haque All are residents of village - Semra, P.O. Sagardina, P.S. Chiraiya, at present village Dhaka Ajad Chowk P.O. Dhaka, P.S. Dhaka, District - East Champaran
4. Ishlamul Nisha wife of Md. Farukh Haibull Kayam Resident of village - Piprawazid, P.O. Dhaka, P.S. Dhaka, District - East Champaran
5. Shahun Nisha wife of Allaudin Haibull Kayam Resident of village - Sagardina, P.O. Sagardina, P.S. Chiraiya, District - East Champaran
6. Aasma Khatoon wife of Sheikh Abdullah Haibul Kayum Resident of village - Rasoolpur Sagardina, P.O. Sagardina, P.S. Shikarganj, District - East Champaran
7. Nazama Khatoon wife of Reyaz Ahmad Haibul Kayam Defendant no. 4 to 7 are daughters of late Ainul Haque Resident of village - Sagardina, P.O. Sagardina, P.S. Chiraiya, District - East Champaran
8. Sheikh Mohammad Shamshuddin son of Late Shekh Md. Jahur
9. Sheikh Mohammad Kamruddin son of Late Shekh Md. Jahur
10. Sheikh Mohammad Amaruddin son of Late Md. Jahur
11. Shekh Mohammad Naimuddin son of Md. Jahur All respondents no. 8, 9, 10, 11 are residents of village - Semra, P.O. Sagardina, P.S. Chiraiya, District - East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar No. III, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

Date: 07-09-2016

Heard Mr. Sunil Kumar, learned counsel for the petitioners.

The plaintiffs are the petitioners in this application questioning the legal sustainability of the impugned order by which the amendment as prayed by the defendants in the written statement has been allowed.

The suit has been filed by the plaintiffs for partition asserting that the suit property is joint between the parties. The defendants filed their written statement contesting the case of the plaintiffs and coming out with the case that there had been previous partition between the parties. By the amendment, the defendants have sought to introduce the fact regarding the manner in which the previous partition was done between the parties with regard to the suit property. The learned court below has allowed the prayer for amendment.

Learned counsel for the petitioner has submitted that the amendment will prejudice the case of the plaintiffs as the defendants have now introduced the case of partition through Yadast Batwara. It has also been prayed by the petitioners that the petitioners may be given opportunity to lead evidence denying the case introduced by the petitioners by way of rebuttal.

After considering the submission and the perusal of the impugned order, it is evident that the defendants have contested the case of the plaintiffs on the ground of previous partition. By way of amendment the defendants have only sought to elaborate the manner of partition and definitely therefore it is not a new case introduced by the defendants. The learned court below has not committed error of jurisdiction or material irregularity in passing the impugned order. This Court, therefore, is not inclined to interfere with the impugned order.

The application is accordingly, dismissed.

However, the plaintiff-petitioners shall be at liberty to lead evidence in rebuttal of the new fact introduced by the defendants.

(V. Nath, J)

Devendra/-

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