

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18085 of 2015

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Smt. Asha Devi

.... Petitioner/s

Versus

Smt. Usha Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Nandan Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 25-10-2016

Heard learned counsel for the petitioner and learned
counsel for the respondent.

Earlier on the admission matter, notices were issued to
the respondents.

2. Perused the impugned order dated 12.02.2015 passed
by the Additional District Judge-14th Patna in T.S. No. 03 of 2011
arising out of Probate Case No. 29 of 2009 whereby the learned court
below rejected item No. 3 of the amendment application sought for
amendment by the objector-petitioner.

3. Learned counsel for the petitioner, who is objector in
the probate case, submitted that the medical prescription of the
deceased-testator, Munaki Devi was kept in the box, therefore, it
could not be filed prior to commencement of trial. During that period
of Sharadh of Munaki Devi, the applicant-respondent committed
theft of the medical prescription from the box. Therefore, medical



prescription could not be found as such those were not filed. If the amendment is not allowed then it will occasion failure of justice because the petitioner has challenged that the Will in question is forged and fabricated. According to the petitioner, deceased-Munaki Devi was got treated by the present petitioner. Therefore, the petitioner have got the medical prescription. At that time when the trial commenced, the son of the petitioner was ill and subsequently he died.

3. On the other hand learned counsel for the respondent submitted that according to proviso to Order 6 Rule 17 C.P.C., no person can be allowed to amend his pleading after commencement of trial. After commencement of trial, the conditions mentioned in the proviso is to be fulfilled and if the Court is satisfied that the person seeking amendment in spite of due diligence would not have brought the fact of amendment prior to commencement of trial then only the Court will have the jurisdiction to allow the amendment. Moreover, according to learned counsel for the respondents if the amendment sought for is necessary then only it will be allowed. The learned counsel further submitted that the court below considering the various decisions of Supreme Court as well as the decision of the Patna High Court recorded finding that the petitioner failed to prove due diligence.

4. From perusal of the impugned order, it appears that the

court below has passed a reasoned order and the order is passed on consideration of the decision of either the Supreme Court or the High Court. The order impugned is not irrational nor it can be said that it is without jurisdiction. So far submission of the learned counsel for the petitioner that the amendment sought for in item No. 3 is necessary for decision of the real controversy between the parties is concerned, it may be mentioned here that the amendment sought for is to the effect that the applicant during Shradh of Munaki Devi had stolen all the prescription regarding treatment of Munaki Devi from the box of this objector. In view of this submission, which is sought to be amended, it can very safely be said that the petitioner was knowing this fact that the prescriptions were in her box but it was not pleaded in the objection/written statement field in the probate case/title suit. In view of this above fact, it cannot be said that the finding recorded by the court below to the effect that the petitioner-objector failed to prove due diligence is perverse. In view of the above facts and circumstances of the case, I find no jurisdictional error in the impugned order, as such, it needs no interference in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)