

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23757 of 2012

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Md. Nasim Akhtar, son of late Abdul Jalil, Resident of village+P.O.-
Madaripur, P.S. Bajpatti, District-Sitamarhi.

.... Petitioner/s

Versus

1. Md. Badre Alam.
2. Md. Kamre Alam, both sons of late Md. Khalil, resident of
village+P.O-Dharampur, P.S.-Nanpur, District-Sitamarhi.
3. Most. Samareen Nisha, wife of late Md. Anas.
4. Md. Junaid, son of late Md. Anas.
5. Md. Jawed, son of late Md. Anas.
6. Md. Balal Jaid (minor) son of late Md. Anas.
7. Md. Aamir (minor) son of late Md. Anas, both through the next friend
and elder brother Md. Junaid, son of late Md. Anas.
8. Najia Tarannum, daughter of late Md. Anas.
9. Shabnam Parveen, daughter of late Md. Anas, all residents of
village+P.O. Madaripur, P.S. Bajpatti, District-Sitamarhi.
10. Nazneen Khatoon, daughter of late Md. Anas and wife of Maulana
Izhar resident of village-Bakhari, P.O+P.S. Bajpatti, District-
Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harendra Kumar, Adv.
For the Respondent/s : Mr. Azhhar Mustafa, Adv.
Mr. Murad Ashraf, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 28-03-2016 Heard the learned counsel for the petitioner and the
learned counsel for the defendant-respondents.

The plaintiff has filed the present application under
Article 227 of the Constitution of India challenging the impugned
order passed by the learned appellate court below whereby the

prayer of the plaintiff for amendment in the plaint at the appellate stage has been refused.

The facts are not in dispute that the plaintiff filed the suit in the year 2005 praying for declaration of his title over the suit land. The plaintiff claimed his title over the suit property on the basis of partition of the family property. The defendants appeared and after contest, the suit was dismissed. Thereafter the plaintiff filed Title Appeal No. 22 of 2009 against the said judgment and decree. It transpires from the impugned order and has not been disputed on behalf of the petitioner that earlier an amendment petition was filed on behalf of the plaintiff in the year 2010 but the same was not pressed and was dismissed as such on 02.07.2012 on the prayer made on behalf of the plaintiff-appellant. Thereafter, another amendment petition has been filed on behalf of the plaintiff-appellant seeking certain amendments in the plaint.

It transpires from the impugned order as well as from the submissions on behalf of the parties that by the proposed amendment, the plaintiff wants to introduce the case that the suit property was not entirely obtained through partition as earlier pleaded but partly through purchase and partly by way of partition. The defendant-respondents contested the prayer of the plaintiff and by the impugned order, the appellate court below has turned

down the prayer of the plaintiff-appellant.

After perusal of the impugned order and consideration of the submissions, it is manifest that the amendment has been sought in the plaint by the plaintiff at the appellate stage and the amendment introduced a change in the case of the plaintiff regarding the acquisition of title over the suit property. It is not in dispute that the suit has been tried on the basis of the case of the plaintiff that the suit property was obtained by partition. There was obviously no trial and finding in the suit with regard to the acquisition of the title of the plaintiff through the sale deed as has been sought to be raised through amendment at the appellate stage.

The learned counsel for the petitioner has relied upon the judgments of the Apex Court in the case of **Revajeetu Builders Vs. Narayanaswamy, 2009 (10) SCC 84** and also on the decision of the Apex Court in the case of **Usha Devi Vs. Rijwan Ahamd, A.I.R. 2008 SC 1147**. However, from the perusal of the judgment in the case of **Revajeetu Builders** (supra), it does not appear that such a long rope has been allowed to seek amendment in the plaint changing the basis of the claim in entirety at the appellate stage. The another decision in **Usha Devi** (supra) deals with the amendment in the written statement and that too at



the stage of trial. From the facts as apparent from the impugned order, it does not appear that the plaintiff has pleaded or proved the due diligence in not seeking the amendment earlier either at the stage of the suit or at the initial stage of the appeal. It is also evident that in case the amendment as prayed by the plaintiff is allowed, the defendants would necessarily have to be granted opportunity to file additional written statement and fresh evidence would be required in that context. Though the provision as contained in Order 6 Rule 17 C.P.C. is to be construed liberally, it cannot be construed in a manner to grant such a prayer which would inevitably lead to a de novo trial of the suit. The plaintiff has lost his claim in the suit on one basis and now by way of amendment, the obvious purpose is for retrial of his claim on a new set of facts. It would be profitable here to take into notice the principle laid down by a full Bench of this Court in the case of **Sadhu Sharan Singh Vs. Deonath Saran, A.I.R. 1943 Pat. 206** where it has been observed as follows:-

“.....Counsel for the appellants contended that he could be permitted to amend his plaint so as to make this ground as the ground of attack on Gaya Singh's title, but, in my opinion, this amendment of the plaint, sought to be made at this late stage, is not permissible on this ground alone that it would

change the cause of action for the suit and would mean a retrial of the whole case on a new footing after the substituted defendants are given an opportunity to file a fresh written statement. In my opinion, such a course is neither permissible in law nor desirable in equity.....”

For the aforesaid reasons and discussion, this Court does not find illegality or material irregularity committed by the learned court below in refusing the prayer for amendment as made by the plaintiff-petitioner.

This application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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