

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6857 of 2014

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Ganesh Singh & Anr

.... Petitioner/s

Versus

Surendra Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Rai

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

- 3 16-02-2016
1. Heard the learned counsel, Mr. Nagendra Rai, for the petitioner and the learned counsel, Mr. Vijay Kumar Srivastava, for the respondent.
 2. By the impugned order dated 18th February, 2014 by which learned Munsif III, Chapra rejected the amendment filed by the plaintiff in title suit No.77 of 1992.
 3. From perusal of the impugned order, it appears that the Court below has applied Proviso to Order VI Rule 17 of the code of Civil Procedure and rejected the amendment application without considering the fact that the suit is of the year 1992 and in view of the decision of the Hon'ble Supreme Court reported in **2007 (1) PLJR 765 and 2009 (12) 689**, the Proviso to Order VI Rule 17 will not apply in case of the pleadings filed prior to 1st of

July, 2002.

4. It appears that in the plaint, the plaintiff petitioner clearly stated that Kalawati Devi was not the daughter of Ramdhari Rai and Mostt Akoli. Her whereabouts was not mentioned in the plaint. Subsequently, according to the plaintiff when the plaintiff came to know about her whereabouts, the amendment application was filed giving the details of Kalawati and her parentage with residence. The Court below instead of recording any finding as to whether this amendment sought for by the plaintiff is bona fide and is necessary for just decision of the controversies between the parties rejected on the ground of delay. The Court below has also not considered that still today the plaintiff evidence has not been closed. In view of this it can very safely be held that there is no question of prejudice to the defendant arises as the defendant has got opportunity to deny the case of the plaintiff and also has the opportunity to adduce evidence in rebuttal of the plaintiff's case. Since in the suit, the defendants are claiming title though gift said to have been executed by Kalawati alleging her to be the daughter of Akoli and the plaintiffs are challenging her parentage the amendment sought for by the plaintiff is necessary for just decision in the present suit. Therefore, the Court below has mis-applied the provision of law

and has rejected the amendment application filed by the plaintiff.

5. In view of my above discussion, I find the order passed by the Court below suffers from irregularities and the Court below has not exercised a jurisdiction vested in it by law.

6. Thus, this writ application is allowed. The impugned order is set aside. The plaintiff amendment application is allowed. The defendants respondents are at liberty to file an additional written statement only with respect to amended portion of the plaint within time that may be granted by the Court below.

(Mungeshwar Sahoo, J)

Sanjeev/-

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