

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10636 of 2014

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Jagdish Singh Son of Late Gauri Shankar Rai resident of village Repura, P.S.
Darauli, District Siwan. Petitioner/s

Versus

1. Bharat Singh Son of Late Ram Kripal Singh.
2. Prithwi Singh son of Late Radha Singh
3. Ramjee Singh son of Manan Singh
4. Yogendra Singh Son of late Nageshwar Singh All resident of village Repura,
P.S. Darauli, District Siwan
5. The State of Bihar through the Collector, Siwan. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Adv.

For the Respondent/s : Mr. – M. Nasrul Hoda Khan SC-18

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-07-2016

Heard Mr. Mishra, learned counsel for the petitioner.

By the impugned order, the learned court below has turned down the prayer for amendment in the plaint as made by the plaintiff-petitioner.

Mr.Mishra, learned counsel for the petitioner has submitted that both the parties in the suit have been claiming title over the suit property through the same person (ex landlord) and the plaintiff by proposed amendment wants only to incorporate the genealogy of the family of the ex landlord. It has been further submitted that by the another amendment the plaintiff wants to add the description of the suit property in the schedule of the plaint and the remaining amendment is for the purpose of bringing on record the proceeding of

contempt which has resulted against the defendants. Learned counsel, however, has accepted that the suit was at the stage of argument and the defendants' argument had been complete when the prayer for amendment has been made.

After considering the submissions and perusal of the impugned order, it is manifest that the learned court below has rejected the prayer for amendment keeping in view the proviso to Order 6 Rule 17 C.P.C. requiring due diligence on the part of the parties praying for amendment after the commencement of the trial. In the present case, the trial has admittedly commenced and has even reached to the stage of argument before the amendment was sought for by the plaintiff. The amendments, if allowed, would definitely lead to de novo trial as the defendants will have to be allowed opportunity to rebut the assertions made by the plaintiff through amendment. Still further, the learned court below has also found absence of due diligence on the part of the plaintiff who has chosen to make amendment at the fag end of the suit proceeding since 2008. This Court, therefore, is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India.

The present application is, accordingly, dismissed.

Devendra/-

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(V. Nath, J)