

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22344 of 2012

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1. Bibi Kamtula @ Bibi Kamtullah Wife Of Sahadat Mian Resident Of
Village- Siktaur, P.S.- Chautarwa, District- West Champaran

.... Petitioner/s

Versus

1. Ali Ahamad Mian Son Of Late Bakey Mian Resident Of Village-
Siktaur, P.S.- Chautarwa, District- West Champaran

2. Najamuddin Mian Son Of Ali Ahmad Khan Resident Of Village- Siktaur,
P.S.- Chautarwa, District- West Champaran Respondent/s

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For the Petitioner/s : Mr. Ganpati Trivedi, Advocate

For the respondents

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 25-01-2016

Heard learned counsel for the petitioner as well as

learned counsel for the respondents.

2. Petitioner/plaintiff is aggrieved by an order dated
17.07.2012 passed by Sub Judge-II, Bagaha in T.S. No.74/2009
whereby and whereunder prayer made on her behalf has been
rejected.

3. Parties are litigating since long with respect to the
land under dispute. In the year 1996, a proceeding under Section
144 was initiated amongst the parties with regard to disputed land
wherein, the respondents/defendants had pleaded that they had
obtained the land on the basis of *Purcha* granted in terms of Bihar
Privilege Persons Homestead Tenancy Act.

4. After closing of first chapter before the Executive
Magistrate, the second chapter opens by having Title Suit No.
74/2009 at the end of petitioner/plaintiff whereunder para-8 of
plaint she had specifically mentioned that, during course of
proceeding under Section 144 Cr.P.C., the defendant had disclosed

that they obtained the *purcha* relating to land under dispute according to Bihar Privilege Persons Homestead Tenancy Act. Para-9 of the plaint contains an explanation by way of incorporating the fact that then thereafter, they rushed to C.O. office in order to inquire about such kind of event wherefrom they were fully satisfied by the officials that no such action has been taken. However, infringement continued whereupon the instant suit has been filed.

5. The respondents/defendants appeared and filed their WS wherein specific plea has been made incorporating the case no. 27/86-87 by which they succeeded in getting *Purcha* and in the aforesaid background, an amendment has been sought for at the end of petitioner/plaintiff which has been rejected by the order impugned, hence this petition.

6. The learned respective counsels are unable to disclose whether in a show-cause filed in 144 Cr.P.C. proceeding on behalf of respondents/defendants specific case number was mentioned or not. That being so, the proposed amendment is found maintainable in the eye of law. In likewise manner, application of limitation became question of thorough adjudication, which, for the present cannot be allowed to clutch. Considering the aforesaid event, the order impugned is set aside. Petition is allowed subject to the cost of Rs. 2500/- which will be conditioned precedent in exercising the privilege so allowed and

the same should be deposited within four weeks from today,
subject to right of rebuttal at the end of defendant.

(Aditya Kumar Trivedi, J)

perwez

