

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13557 of 2013

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Ram Anuj Rao Son Of Late Jagarnath Rao Resident Of Village - Nawgaon, P.O.
Belwa More, P.S. Bathwaria, District - West Champaran

.... Petitioner/s

Versus

1. Alok Kumar Son Of Jagarnath Prasad Resident Of Mohalla - Ujain Tola, P.O.
+ P.S. Bettiah Town, District - West Champaran
2. Ranju Devi Daughter Of Late Sheonath Rao, Wife Of Ashok Kumar Singh
Resident Of Village - Ramkola, P.S. Ramkola, District - U.P., At Present
Village - Mairwa, P.O. Nechuwa Jalalpur, P.S. Kuchaikot, District - Gopalganj
3. Sanju Devi Daughter Of Late Sheonath Rao, Wife Of Vijay Kumar Singh
Resident Of Village - Padrauna, P.S. Padrauna, District - Deuriya (U.P.), At
Present Village - Mairwa, P.O. Nechuwa Jalalpur, P.S. Kuchaikot, District -
Gopalganj
4. Shandhya Kumari Daughter Of Late Sheonath Rao Resident Of Village -
Mairwa, P.O. Nechuwa Jalalpur, P.S. Kuchaikot, District - Gopalganj
5. Lichi Devi Wife Of Late Mohan Mahto Resident Of Village - Turahapatti,
Tola - Garbhua, P.O. Turahapatti, P.S. Chanpatia, District - West Champaran
6. Ramdeo Mahto
7. Ramjee Mahto
8. Laxman Mahto
9. Shankar Mahto all Sons Of Late Mohan Mahto Resident Of Village -
Turahapatti, Tola - Garbhua, P.O. Turahapatti, P.S. Chanpatia, District - West
Champaran.
10. Dhela Devi Daughter Of Late Mohan Mahto, Wife Of Sandhu Mahto
Resident Of Village - Kohargarh, P.O. Gahiri, P.S. Nautan, District - West
Champaran
11. Prabhawati Devi Daughter Of Late Mohan Mahto, Wife Of Mithilesh Mahto
Resident Of Village - Harpur Bashnihar, P.O. Manwa Parasi, P.S. Shikarpur,
District - West Champaran
12. Sukwaro Devi Daughter Of Late Mohan Mahto, Wife Of Gajadhar Mahto
Resident Of Village - Bhad Murali, P.O. Lohiyar Math, P.S. Gopalganj, District
- West Champaran



.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Adya Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 22-12-2016

Heard learned counsel for the petitioner.

By the impugned order the learned court below has rejected the prayer for amendment in the written statement as made by the defendant-petitioner.

The plaintiff filed the suit for declaration of title and confirmation of possession and there was categorical case of the plaintiff that the land originally belonged to Moharam Nonia and his sister Chiraiya through gift from Sheo Sahai Mahto. However, it was the case of the plaintiff that Chiraiya died issueless and her entire property was inherited by his brother Moharam Noniya who created a mortgage in favour of Sarafin Raut. The defendant-petitioner in his written statement, however, came out with the case that no such mortgage was ever created by Moharam Nonia in favour of Sarafin Raut. After commencement of the trial, when the plaintiff has already examined five witnesses, the defendant filed the petition praying or amendments in the written statement by which they proposed to completely resile from the earlier statement regarding absence of



mortgage by Moharam Nonia and sought to introduce the fact that Moharam Nonia created the mortgage in favour of Sarafin Raut but never redeemed the same. The other facts relating to creation of another mortgage by Moharam Nonia were also sought to be incorporated.

By order dated 26.06.2012, the learned court below turned down the prayer for amendment. It appears that the petitioner filed the petition for review of the said order which was also rejected by order dated 07.03.2013. The present application has been filed on 16.07.2013 against the order dated 07.03.2013 rejecting the prayer for review. However, during the pendency of this application, an interlocutory application has been filed on behalf of the petitioner praying for amendment in the main application for adding the relief against the order dated 26.06.2012 also.

The learned counsel for the petitioner has submitted that the criteria for consideration for amendment in the plaint and the amendment in the written statement is quite distinct and a liberal approach is to be adopted in case of the prayer for amendment in the written statement. Learned counsel has placed the relevant portions of the plaint, written statement as well as the amendments sought by the petitioner in the written statement in detail and has tried to persuade this Court to take the view that the learned court below has not



properly exercised its jurisdiction in turning down the prayer for amendment.

After considering the submissions as well as materials on record and perusal of the impugned order, it is manifest that the amendment in the written statement has been prayed by the defendant at the stage when the plaintiff has already examined five witnesses. From the averments made in the amendment petition, it does not appear that the facts pertaining to due diligence by the defendant-petitioner in not preferring the amendment at the earlier stages of the suit have been disclosed. From the nature and import of the amendments as sought for, it is also evident that the defendants intend to completely desert their earlier stand and raise altogether different and new case changing the character of the defence. After the plaintiff has started leading his evidence and has admittedly examined five witnesses, allowing the prayer for the amendments as made would irretrievably prejudice the plaintiff. It also cannot be lost sight of that the written statement was filed by the petitioner in the year 1997 itself but the amendment in question was prayed in the year 2012 after the trial had commenced. After rejection of the prayer for amendment, the petitioner filed review petition which was also dismissed in the year 2013 against which the present application has been filed. Here again after lapse of nearly three years, the interlocutory application (I.A. No.



8882 of 2016) has been filed on 15.11.2016 praying for amendment in the present application by adding the relief against the order dated 26.06.2012. The tenor of the impugned order dated 07.03.2013 rejecting the review petition of the petitioner demonstrably reflects the conduct of the petitioner in delaying the disposal of the suit. In the aforesaid factual backdrop, this Court is not inclined to interfere in the impugned order by invoking the jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

However, the petitioner shall be at liberty to raise objection, if such occasion arises, in accordance with law under Section 105 C.P.C.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.01.2017
Transmission Date	

