

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.304 of 2017**

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Sanjay Kumar Sharma

.... Appellant/s

Versus

Abhay Sharma & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Prasad

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

- 2 20-02-2017 **1.** Heard the learned counsel, Mr. Suresh Prasad, for the petitioner.
- 2.** Perused the impugned order dated 20.10.2016 passed by learned Sub Judge, Areraj, East Champaran in Title Suit No.134 of 2005 whereby the learned Sub Judge has allowed the amendment application filed by the plaintiff-respondent.
- 3.** From perusal of the impugned order, it appears that the Court below found that the original plaintiff has died and the legal representatives have been substituted and the amendment sought for will not change the nature of the suit.
- 4.** The only grievance of the petitioner is that earlier will has been executed in favour of the present petitioner by the original plaintiff and the will has already been probated. After probate, the petitioner is claiming in possession of the property



and now by way of amendment, the plaintiff who have been substituted are claiming to be in possession of the property.

5. It may be mentioned here that so far probate case is concerned, the Court in the probate case can decide only the genuineness of the will and therefore, the title and possession of the property is entirely a foreign matter so far probate case is concerned.

6. So far amendment is concerned which party is in possession is a question of merit which can be decided after the evidence are adduced by the parties.

7. The Hon'ble Supreme Court in the case of ***Rajesh Kumar Agrawal vs. K.K. Modi (2006) 4 SCC 385*** has held that 'while considering the amendment application, the merits of the contents of the amendment application is not required to be prejudged. The question to be decided by the Court is whether if amendment is allowed, any prejudice will be caused to the petitioner or not. This is the view also of the Supreme Court in the case of ***Lakha Ram Sharma Vs. Balar Marketing Private Ltd..(2008) 17 SCC 671***.

8. In view of the above facts and circumstances of the case only because amendments have been allowed, no prejudice is



caused to the petitioner.

9. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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