

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.585 of 2016

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1. Prof. Aditya Nath Saha Son of late Rabindra Nath Saha resident of Mohalla-Dharamganj, Post Office, Police Station and District Kishanganj

.... Appellant/s

Versus

1. Bibhuti Nah Saha son of late Rabindra Nath Saha, resident of Mohalla-Dharamganj, Post Office Police Station and District Kishanganj
2. Tridiv Saha son of late Dr. Rabindra Nath Saha resident of 2650, New 2nd St. 100 Oc ALA FL. 34475, USA through Power of Attorney holder Sri Bibhuti Nath Saha
3. Kamal Nath Saha son of late Rabindra Nath Saha resident of 10610 S.W., East Park Are Port FTLUcie, FL 34987, U.S.A.,
4. Gita Saha Wife Baldeo Prasad resident of Dangibasti Road, Post Office, Police Station and District Kishanganj
5. Asha Saha widow of late Ram Lal Saha C/o Dr. Anuj Kumar Saha resident of Dharamshala Road, Post Office, Police Station and District Kishanganj
6. Rita Saha wife of Prof. Birendra Modi resident of Dharamshala Road , Post Office, Police Station and District Kishanganj
7. Bulbul Lal wife of Prof. Ghanshayam Lal resident of Dharamshala Road, Post Office, Police Station and District Kishanganj
8. Durga Saha wife of Vinay Prakash Saha resident of Mecon Vatika Singh More, Hatia, Ranchi, Jharkhand
9. Tapesk Kumar Saha son of Baidya Nath Saha resident of Saha Para, Post Office Ganga Rampur, District Dakshin Dinajpur (W.B.)
10. Amresh Kumar Saha son of Baidya Nath Saha resident of Saha Para, Post Office Ganga Rampur, District Dakshin Dinajpur (w.B.)
11. Ashish Kumar Saha son of Baidya Nath Saha resident of Saha Para, Post Office Ganga Rampur, District Dakshin Dinajpur (W.B.)
12. Kaveri Saha daughter of Baidya Nath Saha, wife of Gobindo Chandra Saha resident of Sashi Tuli Lane, Rabindra Avenue Malda (W.B.)
13. Kripa Saha daughter of Baidya Nath Saha wife of Prabha Roy resident of School Para, Post Office Ganga Rampur, District Dakshin Dinajpur (W.B.)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. K. N. Choubey, Sr. advocate
M/s Dineshwar Pandey & Ashok Garg

For the Respondent/s : Mr. Jitendra Kishore Verma, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 12-12-2017

Heard Sri Kamal Nayan Choubey, the learned senior counsel

for the petitioner, and Sri Jitendra Kishore Verma, the learned counsel for

the respondents.



The petitioner has filed this Civil Misc. petition against the order dated 21.04.2016 passed by learned Sub-Judge, Kishanganj in Title (Partition) Suit No. 45 of 2011 by which the learned Sub-Judge partly rejected the petition filed for amendment in the written statement.

Bibhuti Nath Saha and Tridiv Saha filed Title Suit No. 45 of 2011 for partition of the property acquired by their father Dr. Rabindra Nath Saha in his own name and in the name of his wife, Chameli Devi. Dr. Rabindra Nath Saha died leaving behind four sons, Bibhuti Nath Saha, Tridiv Saha, plaintiffs, Aditya Nath Saha, petitioner, and Kamal Nath Saha. Defendants No.1 and 2 filed petition for amendment of written statement. The learned Sub-Judge partly allowed the amendment petition and partly rejected on the ground that admission cannot be allowed to be withdrawn vide order dated 21.04.2016.

The learned senior counsel for the petitioner submits that principle governing the amendment of plaint or written statement is that any such amendment which is required to be necessary for resolution of the real cause and dispute between the parties should be allowed. It is submitted that the learned Sub-Judge has not assigned any reason while disallowing the amendment of written statement and he simply gave reasoning that by amendment admission cannot be allowed to be withdrawn. It has nowhere stated that which statement in the written statement amounts to admission and the same cannot be allowed to be amended.

On the contrary, the learned counsel for the respondents has very fairly submitted that, of course, the learned Sub-Judge has not given



reason for disallowing the amendment petition but if the amendment is read along with written statement it would appear that defendant No.1 admitted in his written statement that there was no partition between the four sons of Dr. Rabindra Nath Saha by metes and bounds but they have constructed house for their own convenience excluding plaintiff No.2. It is further submitted that the defendants have taken the ground to amend the written statement that Dr. Rabindra Nath Saha executed a deed on 21.04.1982 and his intention was that his four sons would not partition the property acquired in his own name or in the name of his wife.

After considering the submission of the parties, I find that on this ground alone that the order is non speaking, the order is not sustainable. Accordingly, the order dated 21.04.2016 is set aside and the matter is remitted to the learned Sub-Judge to pass order in accordance with law after giving reasons.

This Civil Misc. petition is disposed of accordingly.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.12.2017
Transmission Date	N.A.

