

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23313 of 2013

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Suresh Sinha

.... Petitioner/s

Versus

Satya Narain Sinha & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lovekush Kumar

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 10-10-2017

Heard learned counsel Mr. Sachidanand Choudhary

for the petitioner.

2. This writ application has been filed by the defendant-petitioner for setting aside the order dated 04.09.2013 passed by learned Subordinate Judge-II, Danapur in Title Suit No.205 of 2008 whereby the learned court below has allowed the amendment application filed by the plaintiff-respondent.

3. The learned counsel for the petitioner submitted that by amendment the nature of the suit would be changed as earlier civil suit for partition was filed. When the defendant filed written statement alleging that particular schedule property is his self-acquired property which he has purchased by registered sale deed, the plaintiff-respondent filed application for amendment seeking relief for declaring the said sale deed as null and void and thereafter prayed for granting half share in the said schedule



property said to have been purchased by defendant-petitioner. The plaintiff also prayed for converting the suit to title suit. Therefore, the court below should not have allowed the amendment application because by the amendment the plaintiff is now changing the nature of the suit.

4. It may be mentioned here that the suit is at the very initial stage i.e. even issues have not been framed. The plaintiff is own brother of the defendant-petitioner. The suit was filed earlier for simple partition. When the defendant claimed some schedule property as his self acquired property, the plaintiff filed the amendment application seeking for the relief to declare the sale deed as null and void. If the amendment is not allowed at this stage then naturally the dispute which is being now raised by the petitioner that the property is his self acquired property and the claim made by the plaintiff that he has got half share cannot be resolved and for that the plaintiff has to file a separate suit. Since the suit is at the very initial stage, why the plaintiff be directed to file another suit, when the same can be resolved in the present suit. The suit remained to be partition suit but now since the defendant is claiming exclusive title on the basis of purchase, it is necessary for the plaintiff to pray for declaration of the sale deed as null and void as required under Section 31 of the Specific Relief Act.



5. The Hon'ble Supreme Court in **(2009) 10 Supreme Court Cases 84 (Revajeetu Builders and Developers Vs. Narayanswamy and Sons and others)** has held that the Courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care. While deciding the application for amendment the courts must not refuse bona fide, legitimate, honest and necessary amendment. In the present case, at our hand, since the defendant-petitioner in the written statement claimed the schedule property to be his self acquired property on the basis of registered sale deed, it necessitated to file the amendment application seeking declaration with regard to the aforesaid sale deed.

6. Thus, in my opinion, the court below has rightly exercised the jurisdiction under Order VI Rule 17 of the Code of Civil Procedure at this stage in the suit. Thus, there is no case for interference in exercise of supervisory jurisdiction is made out. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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