

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 13520 of 2012

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Smt Sona Devi W/O Bechu Singh Resident Of Village - Nasej, P.S. - Kudra,
District - Kaimur (Bhabhua), At Present Resident Of Village & P.O. - Akhalaspur,
Muhalla – Ram Lal Nagar, Bhabhua, P.S. - Bhabhua, Distt. - Kaimur (Bhabhua)

.... Petitioner/s

Versus

1. Bharat Singh S/O Late Ganesh Pd Singh R/O Vill.- Mokari, P.S. - Bhabhua,
Distt- Kaimur (Bhabhua)
2. Gulab Singh S/O Late Ganesh Pd Singh R/O Vill- Mokari, P.S. - Bhabhua,
Distt.- Kaimur (Bhabhua)
3. Ram Raj Kumhar S/O Shiv Bhajan Kumhar R/O Vill.- Akhalaspur, P.S. -
Bhabhua, Distt.- Kaimur (Bhabhua) At Present Of Akhalaspur Mohalla Ram Lal
Nagar (Bhabhua) Near Bupesh Gupta College, P.S. - Bhabhua, District - Kaimur

.... Respondent/s

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For the Petitioner/s : M/s Baidnath Thakur & Praveen Kumar, Advocates

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CORAM: HON'BLE MR JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 18-03-2017

Heard learned counsel for the petitioner. No one appears
on behalf of respondents though notices have already been served
upon them.

2 Petitioner has prayed for quashing the order dated
07.04.2012 passed by Munsif, Kaimur in Title Suit No 279 of 2004 by
which and where under he partly allowed petition filed by petitioner
under Order 6 Rule 17 of the Civil Procedure Code (for brevity,
CPC).

3 Petitioner filed Title Suit No 279 of 2004 against the
private respondents seeking relief of declaration in her favour in
respect of disputed plot on the ground that she had transferred some



portion of Plot No 3301 to private respondents No 1 and 2 by registered sale deeds dated 13.09.1990 but when she started construction adjacent to the transferred land, private respondents No 1 and 2 stopped her from making construction on the ground that the sale deeds dated 13.09.1990 contains the provision of passage adjacent to the purchased land. The petitioner claimed in her suit that respondents No 1 and 2, in collusion with respondent No 3, who was scribe of the aforesaid sale deed, got entered the factum of passage adjacent to the transferred land.

4 Private respondents appeared in the aforesaid Title Suit and before settlement of the issues, the petitioner filed a petition under Order 6 Rule 17 read with Section 151 of the CPC for certain amendment in her plaint. By way of the aforesaid amendment, the petitioner sought one more relief for declaration that the contents of giving passage and opening window mentioned in the sale deed dated 13.09.1990 is wrong and forged. Apart from the aforesaid amendment, some formal amendments were also sought for.

5 The learned Munsif rejected the amendment of additional relief on the ground that by allowing the aforesaid amendment, it will amount to making amendment in the sale deed dated 13.09.1990.

6 Learned counsel appearing for the petitioner submits



that the entire suit of the petitioner is based on the pleadings that the scribe of the aforesaid sale deed, in collusion with purchasers, fraudulently entered the contents of giving passage and opening window and the aforesaid fact has already been pleaded, particularly, in paragraph 4 and, generally in other paragraphs of the plaint but due to inadvertence, the aforesaid relief was left to be sought for and when the aforesaid fact was detected, the petitioner, immediately, filed amendment petition before the Court below seeking necessary amendments in relief portion. He further submits that the learned Munsif wrongly observed that if the amendment sought for is allowed, the same would amount to making correction in sale deed dated 13.09.1990 because mere amendment in relief does not amount to grant decree or making correction in sale deed in question.

7 The perusal of impugned order dated 07.04.2012 passed by learned Munsif goes to show that the learned Munsif rejected the amendment petition of the petitioner partly under the impression that if the amendment, as sought for by the petitioner is allowed, the same would amount to making correction in sale deeds. In my view, learned counsel for the petitioner rightly submitted that mere allowing the amendment, as sought for by the petitioner, does not amount to making correction in sale deed. Furthermore, I find that in paragraph 4 of the plaint, it has, specifically, been pleaded by



the petitioner that she had not left any passage for window and passage to respondents No 1 and 2 in sale deed dated 13.09.1990 and, therefore, it is apparent from the aforesaid pleadings that the petitioner is not going to bring any new fact in her plaint and the additional relief, as sought for by the petitioner, is completely based on her previous pleadings.

8 Therefore, on the basis of aforesaid discussion, this writ petition is allowed and, accordingly, part of impugned order dated 07.04.2012, by which and where under the prayer of amendment of inclusion of additional relief as sought for by the petitioner was rejected, is modified to the above stated extent and, accordingly, the petition dated 01.03.2011 filed under Order 6 Rule 17 read with Section 151 of CPC on behalf of the petitioner before the Munsif, Bhabhua/concerned Court is allowed in toto.

(Hemant Kumar Srivastava, J)

M.E.H./-

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