

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15084 of 2013

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1. Rajendra Prasad, S/O Late Mahadeo Mahto, Resident Of Village/
Mohalla- Chhoti Pahari, Police Station- Soh Sarai, District- Nalanda.

.... Petitioner

Versus

1. Ram Lal Prasad, S/O Late Mahadeo Mahto, Resident Of Village/
Mohalla- Chhoti Pahari, P.S- Soh Sarai, District- Nalanda.
2. Chandan Kumar, S/O Ram Lal Prasad, Resident Of Village/ Mohalla-
Chhoti Pahari, P.S- Soh Sarai, District- Nalanda.
3. Sneha Kumari Minor, D/O Ram Lal Prasad, Resident Of Village/
Mohalla- Chhoti Pahari, P.S- Soh Sarai, District- Nalanda.
4. Sweta Kumari Minor, D/O Ram Lal Prasad, Resident Of Village/
Mohalla- Chhoti Pahari, P.S- Soh Sarai, District- Nalanda.
5. Niraj Kumar @ Narendra Kumar, S/O Rajendra Prasad, Resident Of
Village/ Mohalla- Choti Pahari, Police Station- Soh Sarai, District- Nalanda.
6. Rashmi Kumari, D/O Rajendra Prasad, Resident Of Village/ Mohalla-
Choti Pahari, Police Station- Soh Sarai, District- Nalanda.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Prasad, Sr. Advocate
Mr. Pramod Kumar, Advocate
Mr. Ritesh Kumar, Advocate
Mr. Dhirendra Kumar, Advocate

For the Respondents : Mr. Pramod Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 21-11-2017 This writ application has been filed by the plaintiff of

Title Suit No.210 of 2011 for setting aside the order dated
05.06.2013 whereby and whereunder the amendment petition filed
under Order VI Rule 17 of the Code of Civil Procedure by the
plaintiff-petitioner was rejected.

2. Heard learned counsel for the petitioner as well as
the respondents.

3. The plaintiff-petitioner has filed the aforesaid title



suit for declaration of his title over 5 and ½ dismissal land of Plot No.756 of Khata No.98 as per details given in Schedule IV of the plaint.

4. The learned counsel for the petitioner submits that the defendant-respondent is full brother of the petitioner. The land in question was given in the share of plaintiff as per partition held in the year 1992-93. As per said partition the petitioner got his name mutated in Revenue Record and since then he is coming in possession over the same. The defendant-respondent, on the other hand, claims that partition between two brothers took place in the year 1991 and he was given 5 and ½ decimal land in suit plot from eastern side and since then he is coming in possession over the same.

5. The plaintiff by filing an amendment petition wants to add one more relief for compensation from 26.07.2011 on which date the respondent allegedly dispossessed the petitioner from the suit land with the help of police during proceeding under Section 144 Cr.P.C.

6. The defendant has filed written statement and has denied the allegation of allotment of Plot no.756 in the share of plaintiff. It has been submitted that the plaintiff can get relief only on proving his case of exclusive possession over the suit land as



per partition between the brothers. The plaintiff is not entitled to compensation as he was neither in possession nor has been dispossessed from suit property.

7. It appears from the submission of learned counsel for the petitioner that the court below has not framed the issue till the date. Therefore, the defendant is not prejudiced, if the amendment is allowed. The amendment is formal in nature. The relief sought to be added is ancillary relief of the plaintiff which is based on the pleadings made in the plaint.

8. Accordingly, this writ application is allowed. The impugned order refusing to amend the plaint is, therefore, set aside. The defendant shall be at liberty only to rebut the amended portion of plaint by filing additional written statement.

(Sanjay Kumar, J)

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