

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1116 of 2016

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1. Kashi Prasad Son of Late Raman Prasad
2. Hari Narayan Prasad Son of Late Raman Prasad
3. Jay Narayan Prasad Son of Late Nageshwar Prasad All are residents of
Village - Siswa Tola Bhutaha, P.O. - Siswa Bazar, P.S. - Paharpur, District -
East Champaran.

.... Petitioners

Versus

1. Mannu Das Son of Late Raghuni Das Resident of Village - Siswa Tola
Bhutaha, P.O. - Siswa Bazar, P.S. - Paharpur, District - East Champaran.
2. Thagiya Devi wife of Thakur Das, Daughter of Late Raghuni Das
Resident of Village - Siarahi/Mathiay, P.O. Jagdishpur P.S. - Nautan,
District - East Champaran, daughter of Late Raghuni Das
3. Mosmat Balkeshiya wife of Baldeo Das Resident of Village -
Banchhihuli, P.O. + P.S. - Harsidhi, District - East Champaran.
4. Ramsawari Devi wife of Radha Das, Daughter of Late Shivnandan Tatwa
Resident of Village - Goithaha, P.O. - Raayak Rariya, P.S. - Harsidhi,
District - East Champaran.
5. Manturiya Devi wife of Harikishun Das, Daughter of Late Shivnandan
Tatwa Resident of Village - Goithaha, P.O. - Raayak Rariya, P.S. -
Harsidhi, District - East Champaran.
6. Thage Das Son of Late Manroop Das
7. Nathuni Das Son of Late Dhurkhel Das Sl. No. 6 & 7 residents of Village
- Siswa Tola Bhutaha, P.O. - Siswa Bazar, P.S. - Paharpur, District - East
Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shakti Suman Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 11-12-2017 Heard both sides.

The petitioners filed this petition against the order dated
06.05.2016 passed in Title Suit No.468 of 2004.

The petitioners are defendants 1st set in Title Suit
No.468 of 2004. The plaintiff filed suit for partition of Plot



No.1967 of Khata No.505, area 13 katha 9 dhurs and to carve out 1/3rd share in the aforesaid land. The defendants 1st set filed written statement stating therein that the suit land of Plot No.1967 was purchased by them through oral deed as well as sale deeds from defendants 2nd and 3rd set in the year 1974 and 5 katha land from the father of the plaintiff and defendants 2nd and 3rd set and they are coming in peaceful possession since 1920. The plaintiffs thereafter filed petition under Order VI Rule 17 of the C.P.C.(hereinafter referred to as the Code) for amendment of plaint and prayer portion. The plaintiff wanted to delete para 9 of the plaint and substitute the following lands stated in para 'G' of the amendment petition. After hearing both sides, Sub Judge, Areraj allowed the amendment petition vide order dated 06.05.2016. The defendants 1st set-petitioner, being aggrieved by the aforesaid order, filed this civil miscellaneous petition.

The learned counsel for the petitioners submits that the plaintiff has filed partition suit with regard to one plot i.e. Khesra No.1967 of Khata No.505 and admitted in para 9 of the plaint that defendants 2nd and 3rd set executed the sale deed with regard to land falling in their share in favour of defendants 1st set-petitioner. It is further submitted that plaintiff has stated and admitted that no partition was done with regard to the suit property but when



defendant filed written statement stating therein in reply to the statement made in para 9 to the plaint that defendants 1st set purchased 5 katha and odd in the year 1920 from the ancestor of the plaintiff and defendants 2nd and 3rd set. Thereafter, they purchased the remaining portion of the land from defendants 2nd and 3rd set in the year 1974 and they have been coming in peaceful possession. Thereafter, the plaintiff by filing amendment petition wanted to withdraw their admission made in para 9 of the plaint.

On the other hand, the learned counsel for the respondents 1st set submits that the amendment is of formal nature. It is prerogative of the plaintiff to amend the suit and modify the prayer portion according to their wish but that will not cause any prejudice to the defendant and the defendant shall not be put to such a place which cannot be compensated if amendment petition is allowed.

Admittedly, the plaintiff sought partition of one plot bearing No.1967 of Khata No.505 and stated that there was no partition among the coparceners. The plaintiff also admitted in para 9 of the plaint that defendants 2nd and 3rd set sold the lands of their share in favour of defendants 1st set in the year 1974 and on such assertion, the plaintiff sought partition of the property and sought for carving out 1/3rd share in his favour but by inserting the



amendment, the plaintiff sought to delete the entire paragraph 9 by which he admitted that there was no partition among their coparceners and also withdrew the admission that defendants 2nd and 3rd set sold the land in favour of defendants 1st set.

Thus, it is evident that the plaintiff wanted to withdraw the admission with regard to partition of property. The court below has committed illegality by allowing the amendment petition to withdraw the categorical admission of the plaintiff. Thus, the order dated 06.05.2016 is not sustainable. Accordingly, the order dated 06.05.2016 is set aside and this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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