

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1081 of 2016**

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1. Harendra Singh S/o Late Ramdeo Singh Resident of Village-Chhatwara Raibhan, P.S.-Mahua, P.O.-Nijhma Chhatwara, Via-Mahua, District-Vaishali

.... Petitioner/s

Versus

1. Suresh Prasad Singh S/o Late Nagendra Singh Resident of Village-Chhatwara Raibhan, P.S.-Mahua, P.O.-Nijhma Chhatwara, Via-Mahua, District-Vaishali

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Lal

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

4 08-12-2017 Heard both sides.

The petitioner has filed this civil miscellaneous petition against the order dated 08.08.2016 passed by Sub Judge XI, Hajipur, Vaishali in Title Suit No.51 of 2010 by which his amendment petition has been dismissed.

The petitioner is the plaintiff of Title Suit No.51 of 2010. The petitioner filed suit for declaration of title and confirmation of possession on the basis of a sale deed executed in his favour by Shail Kumari Devi and further to restrain the defendant, Suresh Prasad Singh to interfere into the possession of the plaintiff. The proceeding under Section 145 was also initiated. Thereafter, the plaintiff filed the suit. The defendant-respondent,



Suresh Prasad Singh appeared and filed written statement. The respondent disclosed that Shail Kumari Devi executed a deed of agreement in his favour and when she refused to execute the sale deed, respondent filed Title Suit No.92 of 1982. The same was decreed by judgment and decree dated 16.04.1983 and the defendant came in possession on 31.08.1986 vide order passed in Execution Case No.7 of 1983. Shail Kumari Devi also filed Civil Revision No.909 of 2001 and the same was also dismissed by this Court on 26.07.2005. The sale deed was executed and Shail Kumari Devi was allowed to withdraw remaining consideration amount.

The plaintiff-petitioner filed amendment petition for impleading Shail Kumari Devi, the vendor as defendant 2nd set and if it is found that defendant No.1 has got valid title by virtue of sale deed/Mahadanama executed by Shail Kumari Devi, the defendant 2nd set, Shail Kumari Devi be directed to return the entire consideration amount i.e. Rs.1,20,000 with interest to the plaintiff. The plaintiff also prayed for insertion of other facts relating to execution of the sale deed. The learned Sub Judge rejected the petition of amendment on the ground that the litigation in between Shail Kumari Devi and defendant 1st set is closed and if the amendment is allowed impleading Shail Kumari



Devi as defendant No.2, a new case shall be introduced and the nature of the suit shall be changed.

The learned counsel for the petitioner submits that the petitioner was not aware of execution of any deed of agreement to sell in favour of defendants 1st set. When the defendants 1st set filed written statement, the plaintiff filed the petition for amendment which is necessary for decision of the dispute between the parties. Shail Kumari Devi, the vendor of the petitioner is also a necessary party as she sold the land in favour of the plaintiff-petitioner without disclosing the facts that the land had already been sold in favour of defendants 1st set. The plaintiff is entitled to get consideration money from Shail Kumari Devi.

Having considered the submission, I find substantial force in the submission of the petitioner. I find that the amendment is necessary in order to resolve the disputes between the parties but the learned Sub Judge has illegally rejected the same on the ground that the disputes between defendants 1st set and Shail Kumari Devi has already been closed. Consequently, the order dated 08.08.2016 is set aside. The amendment petition is allowed. Accordingly, the civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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