

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15973 of 2013

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1. Badrun Nissa Wife of Late Mojibur Rahman.
 2. Quaisar Alam, Son of Late Mojibur Rahman .
 3. Md.Majharul Haque Son of late Mojibur Rahman.
 4. Md. Riyazul Haque Son of Late Mojibur Rahman.
 5. Md. Moiz Alam, Son of Late Mojibur Rahman.
 6. Bibi Mehar Nigar Daughter of Late Mojibur Rahman.
 7. Bibi Mahtab Banu Daughter of Late Mojibur Rahman.
 8. Ruma Khatoon Daughter of Late Mojibur Rahman.
 9. Ruhi Khatoon Daughter of Late Mojibur Rahman.
 10. Tannu Khatoon Daughter of Late Mojibur Rahman.
- Sl.No.1 to 5 resident of Village-Sohragachi, Police Station-Azamnagar, Sl.No.6 resident of Village+Police Station-Azamnagar, Sl.No.7 resident of village-Malikapur, P.S-Kadwa, Sl.No.8 resident of village-Parvelli, P.S.-Kadwa, Sl.No.9 resident of Village-Baidol, Police Station-Balrampur, and sl.no.10 of resident of village-Bijhra, P.S.-Kadwa,all District-Katihar.

.... Petitioner

Versus

1. Manohar Singh @ Nunia, Son of Late Madan Singh.
 2. Sarwesar Singh @ Nunia Son of Late Ganori Singh.
 3. Radha Singh @ Nunia Son of Late Ganori Singh.
- All resident of village-Tahirpur (Ramol), Police Station-Azamnagar, District-Katihar.
4. Khokha Nunia Son of Mangal Nunia.
 5. Lakhan Nunia Son of Mangal Nunia.
 6. Bhuneshwar Nunia Son of Mangal Nunia.
- All resident of Village-Tahirpur (Ramol) Police Station-Azamnagar, District-Katihar.
7. Altafur Rahman, Son of Late Habibur Rahman, Resident of Village-Sohragachhi, Police Station-Azamnagar, District-Katihar..

.... Respondents

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Appearance :

For the Petitioner/s : Mr. MD. FAHIMUDDIN
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-02-2017

The learned counsel, at the outset, has pressed the interlocutory application (I.A.No.972/2017) which has been filed for substitution of the deceased sole petitioner stating that he died on



30.12.2016 leaving behind his heirs and legal representatives, as mentioned in paragraph-2 of the application.

Considering the facts and circumstances as well as averments made in the interlocutory application, the I.A.No.972/2017 is allowed and the heirs and legal representatives of the deceased sole petitioner, as mentioned in paragraph-2 of the said application are substituted in his place after expunging his name from the writ application.

Heard the learned counsel for the petitioners.

This application has been filed by the petitioners, questioning the legal sustainability of the impugned order dated 12.02.2013 whereby the prayer for amendment by the plaintiff in the plaint has been refused.

From the perusal of the reliefs as prayed in the plaint (Annexure-2) , it transpires that the suit has been filed by the plaintiff for declaration of title and possession over the suit land and further for the alternative relief for recovery of possession, if the plaintiff is being dispossessed during the pendency of the suit. The plaintiff has also prayed for declaration that the sale deed in favour of the defendant 2nd party has not conferred any right, title and possession over the suit property. It transpires from the impugned order that the plaintiff has claimed to have been dispossessed in the year 2005 by



the defendants. However, this fact was not promptly brought to the notice of the court nor any prayer for appropriate amendment was made by the plaintiff regarding his dispossession from the suit land. It is also evident that the trial commenced and the argument on behalf of the defendant was completed on 20.12.2012 and thereafter the argument on behalf of the plaintiff only remained to be done. However, at that stage, the prayer for amendment in the relief portion as well as in certain paragraphs pertaining to the fact of dispossessions in the year 2005 was made by the plaintiff. The learned court below, after considering the facts and circumstances, has refused the prayer as sought by the plaintiff.

After considering the submissions and perusal of the impugned order, this Court does not find that the learned court below has committed any illegality or material irregularity in passing the impugned order. At this juncture, the submission on behalf of the petitioners has been made that the alternative relief in the plaint for recovery of possession in case of dispossession is already there and therefore the appropriate direction be issued in this regard. This Court declines to pass any such observation or direction.

In the ultimate eventuate, this Court does not find it a fit case for invoking the jurisdiction under Article 227 of the Constitution of India.



The application is, accordingly, dismissed.

However, this order will not prejudice the right of the petitioners to pursue the suit in accordance with law.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.02.2017
Transmission Date	

