

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.332 of 2016

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1. Sarswati Nayak, Wife of Late Jagdish Narain Nayak.
 2. Sameer Kumar Nayak, Son of Late Jagdish Narain Nayak.
Both residents of Mohalla-Chaklokman @ Dalsinghsarai, Ward No.3,
Dalsinghsarai, P.S.-Dalsinghsarai, District-Samastipur.

.... Petitioners.

Versus

1. Devendra Kumar Nayak, Son of Late Ram Govind Nayak, resident of Mohalla-Chaklokman @ Dalsinghsarai, P.S.-Dalsinghsarai, District-Samastipur.
2. Sumitra Devi, D/o Late Ram Govind Nayak and Wife of Late Janardan Prasad Mandal, R/o Mohalla-Sadar Bazar, Jamalpur, P.S.-Jamalpur, District-Munger.
3. Satyawati Devi, D/o Late Ram Govind Nayak and Wife of Sri Satish Chandra Pradhan, R/o Mohalla-Kasipur, Near Bhola Talkies, Ward No.9, Samastipur, P.S.& District-Samastipur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Arvind Kumar Sharma

For the Respondent/s : Mr. Ritesh Kumar No.1, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-03-2017

Heard Mr.Pramod Kumar Singh, learned
counsel appearing for the petitioners and the learned counsel
appearing for the opposite parties.

By the impugned order, the learned court below
has refused the prayer for amendment in the plaint as prayed by the
plaintiff-petitioners.

The matrix of facts discloses that a suit for
partition was filed by the plaintiff-petitioner. The defendant-
respondents filed their written statement wherein they came out with
the case giving the details of some of the properties that those



properties were joint family properties which were deliberately left out by the plaintiff in the suit for partition. The plaintiff-petitioners, thereafter, by amendment, which was allowed, incorporated the Schedule-II in the plaint containing the properties which were mentioned in the written statement of the defendant-respondent as joint family properties but claimed the same to be his self acquired property. It has also been accepted by the learned counsel for the petitioners that the specific issue was framed in the suit with regard to the properties in Schedule-II to be joint family properties or the self-acquired property of the plaintiff-petitioners. The trial court came to the conclusion that the properties mentioned in Schedule-II were not the self acquired property of the plaintiff-petitioners. Accordingly, the suit for partition was decreed with regard to the Schedule I and II properties.

The plaintiff-petitioners thereafter filed the Title Appeal No.63/2014 against the judgment and decree passed in the partition suit whereby the suit was decreed allowing 1/4th share in Schedule-I and II property to the plaintiff, the defendant nos.1, 2 and 3. During the pendency of the appeal, the plaintiff-petitioner prayed for amendment in the plaint seeking to incorporate the relief for declaration of title with regard to the property mentioned in Schedule-II of the plaint.



The learned counsel for the petitioners has submitted that the addition of such relief by the petitioners would not prejudice the respondents as the issue has already been framed in the suit and the parties have led their evidence on the said issue. Elaborating his submissions, the learned counsel has further contended that if the said issue pertaining to Schedule-II property as framed by the trial court would be decided in appeal in favour of the present petitioner then respondents would not get the relief for partition but if that issue is decided against him then the decree passed by the trial court would stand affirmed to that extent.

The learned counsel appearing for the respondents, however, has submitted that the present amendment would change the nature and scope of the suit from the suit for partition to a suit for declaration of title.

After considering the submissions and perusal of the materials on record including the impugned order, it is evident that the Schedule-II property in the plaint was added by the plaintiff by way of amendment. However, no relief with regard to that property was sought at the time of making the amendment. The parties went to trial on the specific issues in the suit relating to Schedule-II property to be self-acquired or joint family property. The said issue has been determined against the plaintiff holding the property in Schedule-II to



be joint family property. Now at the appellate stage the addition of relief with regard to the Schedule-II property will certainly change basic structure of the suit. From the perusal of the amendment petition as filed by the plaintiff in the appeal, there appears to be no reason assigned for not seeking the amendment at earlier stages of the suit. This Court holds that in presence of the specific issue in the suit pertaining to the Schedule-II property the relief as prayed by the plaintiff to be incorporated by amendment cannot be allowed. The learned court below has also come to the conclusion that the relief as prayed separately for declaration of title over Schedule II property now cannot be allowed.

This application, sans merit, is accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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