

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.405 of 2016

- =====
1. Rajendra Mehta son of Late Bhaiya Ram Mehta Resident of Village - Shekhpura, P.O. - Kathotia, P.S. - Bihariganj, District - Madhepura.
 2. Dropadi Devi D/o Bhaiyam Ram Mehta and wife of Chandeshwar Mehta @ Channay Mehta resident of Village - Barmodar P.O. Biraili Bazar, PS. Singheshwar, Distt. Madhepura.
 3. Sushila Devi d/o Bhaiya Ram Mehta wife of Late Amrika Mehta r/o village - Laxmipur P.O. and P.S. Bihariganj, Distt. Madhepura.

.... Petitioners.

Versus

1. Mala Devi d/o Upendra Mehta wife of Shri Gopal Singh resident of village - Kadwakasimpur PS Bihari Ganj, District Madhepura.
2. Yogendra Mehta
3. Posendra Mehta
4. Dharmendra Kumar All sons of Upendra Mehta
5. Prakash Mehta
6. Pawan Mehta
7. Bilash Mehta All are sons of Yogendra Mehta All are residents of Village - Shekhpura, PS Bihariganj, Distt. Madhepura.

.... Opposite Parties.

=====

Appearance :

For the Appellant/s : Mr. Kumar Vishoka Nand, Adv.

For the Respondent/s : Mr. Lala Sachindra Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-03-2017

Heard learned counsel appearing for the
petitioners and learned counsel who has appeared for the respondents.

By the impugned order, the learned court below
has allowed the prayer for amendment in the plaint by the plaintiff at
the stage when the suit was posted for argument.

The learned counsel for the petitioners has
assailed the impugned order submitting that the learned court below
ought not to have allowed the prayer for amendment at the stage when



the suit has been posted for argument. The learned counsel for the respondents, however, has submitted that the amendments are only formal in nature and the defendants may be granted liberty to amend their pleading and lead evidence.

After considering the submissions and the materials on record including the petition filed by the plaintiff for amendment (Annexure-3), it is evident that the plaintiff has not assigned any reason for not making the prayer for amendment at earlier stages of the suit.

The petition for amendment contains averments which are very casual in nature and the impugned order has also not recorded any finding regarding the reasons which prevented the plaintiff from seeking the amendments at earlier stages of the suit which would have given the adequate opportunity to the defendants to contest the same. This leads to the inevitable inference that the amendments have been deliberately sought after the disclosure of the evidence of the defendants. It is well settled that the amendment leading to de novo trial of the suit cannot be allowed. It is manifest that if the present amendments as sought for by the plaintiff are allowed, it will definitely lead to a de novo trial as the defendants will have to be granted liberty of rebuttal in accordance with law.

As such, this Court finds that the learned court



below has committed material irregularity and illegality in allowing the prayer for amendment by the impugned order.

The present application is accordingly allowed and the impugned order is set aside. The learned court below is directed to proceed for disposal of the suit which has been pending since 1997.

However, this order shall not prejudice the right of the plaintiff to raise his appropriate objection , if such situation arises, in accordance with Section 105 C.P.C.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--

