

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1040 of 2017

=====

1. Smt. Sumitra Devi, W/o Aharpur, resident of Village- Chandi, P.S.- Chandi, Distt- Bhojpur, presently residing at Moh.- Pato Ki Bagh, P.S.- Khajekala, District- Patna- 800008.

.... Appellant/s

Versus

1. Sri Om Prakash, S/o Late Laxmi Narayan Mahto, resident of Moh.- Diwan Mohalla, Ramjanki Chauraha, P.S.- Khajekala, District- Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Neeraj Kumar,
Mr. Abhishek Singh,
Mr. Sudhanshu Trivedi,
Mr. Rajni Kant Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 04-10-2017

The order, dated 17.03.2017, passed in Title Suit No. 277 of 2011 by the learned Sub-Judge I, Patna City is under challenge in writ application, filed under Article 227 of the Constitution of India, whereby, the court below has allowed the amendment application preferred by the plaintiff/respondent, under Order 6 Rule 17 of the Code of Civil Procedure, seeking relief of decree for partition to the extent of half share of defendant.

Learned counsel for the petitioner agrees that trial before the court below has not commenced, inasmuch as, even issues have not been framed.

Assailing the impugned order, however, learned



counsel for the petitioner has submitted that because of the amendment allowed, the subject-matter of the suit stands changed, therefore, the impugned order is bad in law. He has further submitted that there is error apparent on record in the order dated 17.03.2017, wherein, date of application, filed under Order 6 Rule 17, has been mentioned as 29.01.2014 in place of 02.11.2016.

On perusal of the impugned order, I do not find any illegality, which is going to cause prejudice to the petitioner, in any manner, causing miscarriage of justice.

The petitioner shall certainly have the opportunity to file his written statement in view of the amendment allowed by the court below. I am not convinced with the submission that the amendment allowed amounts to changing the very nature of the suit.

This application is, accordingly, dismissed.

It is made clear, however, that the petitioner/defendant must be given opportunity to file his written statement upon the amendment allowed by the court below.

(Chakradhari Sharan Singh, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	30.10.2017
Transmission Date	

