

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1230 of 2016

=====

Shankar Sao, son of late Hazari Sao, Resident of Jai Nagar Ward No.27
Municipality Lakhisarai, P.O.-P.S.-District Lakhisarai.

.... Plaintiff-petitioner

Versus

1. Ram Chandra Sao, son of late Hazari Sao
2. Ranjit Kumar son of late Ram Chandra Sao

Both resident of village Jai Nagar Ward No.27 Municipality
Lakhisarai, P.S.-P.S.District Lakhisarai

.... Defendants-Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Rabi Bhushan

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

3 19-01-2018 Heard Mr. Pankaj Kumar Sinha, learned counsel appearing on behalf of the petitioner and Mr. Amrendra Kumar, learned counsel, appearing on behalf of the respondents.

The petitioner has filed this petition for setting aside the order dated 22.7.2016 passed in Title Suit No.10 of 2014. The plaintiff-petitioner filed suit for declaration of title over the lands described in Schedule 'Ka' of the plaint and also prayed for injunction against the respondent from interfering into the peaceful possession of the petitioner.

Defendants filed written statement and stated that the part land of Schedule 'ka' is kept joint for the use of both the sides for path.

Plaintiff examined two witnesses and thereafter, filed a petition under Order VI Rule 17 for amendment of plaint and for insertion of facts after para 2 of the plaint "that the statement of the defendants



are entire false that the disputed lands were kept joint for the use of both the parties and memorandum of partition dated 14.06.2001 filed by the defendant is partially correct and partially incorrect. The signature obtained on the memorandum of partition is obtained on plain paper. And later on the same plain paper was turned into a paper of memorandum of partition.”

The learned Munsif rejected the amendment petition. Being dissatisfied with the aforesaid order, the petitioner moved this Court.

Mr. Pankaj Kumar Singh, learned counsel for the petitioner firstly submitted that at page 20, ie., first page of the order, the learned Munsif has wrongly stated the date of order 22.12.2015 which should have been 22.07.2016. The amendment petition is for inserting certain facts after para 2 of the plaint could not change the nature of the suit. It is needless to say that the defendant may file additional written statement if they so require. The learned Munsif placed reliance of the judgment of Hon’ble Apex Court and has categorically stated that the Court has wide power and unfettered discretion to allow amendment of pleadings in such manner and such terms as it appears to be just and proper and if the same does not work an injustice to the other side. From the facts sought to be incorporated, it is clear that the nature of suit would not change. The plaintiff simply asserted that paper showing memorandum of partition is partly true and partly correct. The defendants took



signature of the petition on a plain paper and later on, the same plain paper was converted to a memorandum of partition. Therefore, the order is not sustainable. The learned counsel for the respondents submitted that the amendment would change the nature of the suit.

Admittedly, the plaintiff filed declaration of title over the lands mentioned in Schedule 'Ka' of the plaint and averred that the plaintiff is the sole owner of the land and the same is in exclusive use of the plaintiff. The defendant be also restrained from interfering into the peaceful possession but after filing of written statement, the plaintiff's suit insertion of certain facts by way of amendment. Proposed amendment is about the interpolation and creation of the memorandum of partition.

On the aforesaid facts, it appears that it would not change the nature of the suit and thus I find that the learned Munsif, Lakhisarai has illegally and erroneously rejected the petition for amendment.

Accordingly, the order dated 22.07.2016 is set aside. Amendment is allowed. This Civil Misc. is accordingly allowed. The defendant, if so desire, may file additional document.

(Prabhat Kumar Jha, J)

Sanjeev/-

U			
---	--	--	--

