

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20004 of 2011

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1. Kamlesh Kumar Son of Late Jagdish Prasad resident of Mohalla Salimpur Ahra, P.S. Gandhi Maidan, P.O.-Kadamkuan, Dist. Patna.
 2. Bimlesh Kumar Son of Late Jagdish Prasad resident of Mohalla Salimpur Ahra, P.S. Gandhi Maidan, P.O.-Kadamkuan, Dist. Patna.
 3. Mithilesh Kumar Son of Late Jagdish Prasad resident of Mohalla Salimpur Ahra, P.S. Gandhi Maidan, P.O.-Kadamkuan, Dist. Patna.

.... Petitioners

Versus

1. Smt. Kamala Gupta Widow of Late Chanderdeep Prasad resident of Mohalla Bakerganj Daldali Road, P.S. Kadamkuan, Dist. Patna, at present residing at Bank Colony No. 100, Biskuit Factory Road, Nasriganj, P.S. Danapur, P.O. Digha, Dist. Patna.
2. Shri Rajesh Kumar Son of Late Chanderdeep Prasad resident of Mohalla Bakerganj Daldali Road, P.S. Kadamkuan, Dist. Patna at present residing at Bank Colony No. 100, Biskuit Factory Road, Nasriganj, P.S. Danapur, P.O. Digha, Dist. Patna.
3. Geeta Devi Wife of Umesh Prakash Bakerganj Gola Road, P.S. Pirbahore, P.O. Bankipur, Dist.-Patna.
4. Indu Gupta W/O Shri Arun Kumar Gupta resident of Daldali Road, Bakerganj, P.O. and P.S. Kadamkuan, Dist. Patna.
5. Veena Raj Wife of Shri Brij Raj Mohalla Bakerganj, Gola Road, P.S. Pirbahore, Dist. Patna.
6. Smt. Meera Priyadershi Wife of Shri Sanjay Kumar Priyadershi resident of Sohsarai, P.O. and P.S. Sohsarai, Dist. Nalanda.
7. Smt. Punam Kumari Wife of Shri Alok Kumar Gupta resident of Nalapar, P.S. Malsalami, P.O. Malsalami, Dist. Patna.
8. Miss Kiran Kumari daughter of Late Rajender Prasad Gupta resident of Mohalla Bakerganj Daldali Road, P.S. Kadamkuan, Dist. Patna.
9. Miss Parinate Kumari daughter of Late Rajender Prasad resident of Mohalla Daldali Road, P.S. Kadamkuan, Dist. Patna.
10. Deepak Kumar Son of Late Rajender Prasad resident of Mohalla Bakerganj, Daldali Road, P.O. and P.S. Kadamkuan, Dist. Patna.
11. Smt. Chanda Prasad Widow of Late Manoj Kumar resident of Mohalla Bakerganj, Baripath in the back of Apna Bazar, P.S. Pirbahore, P.O. Bankipore, Dist. Patna.
12. Jogendra Prasad Alias Bhola Sah Son of Late Sheogovind Sah
13. Ashok Kumar Son of Shri Jogender Prasad resident of Mohalla-Bakerganj, Daldali Road, P.S. and P.O. Kadamkuan, Dist. Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ashok Nandan Prasad, Advocate
Mr. Satya Ranjan Sinha, Advocate
For the Respondent/s : Mr. Naresh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 04-10-2018

Petitioners are substituted defendants of original defendant no.1 Jagdish Prasad and they have filed this writ application for quashing the order dated 24.08.2011 passed by Subordinate Judge XII, Patna in Title Suit No.480 of 1984 whereby and whereunder their prayer to incorporate the amendment in the written statement as allowed by the court below on 15.10.1996 was rejected.

2. Heard learned counsels for the petitioners and the respondents.

3. The respondents 1st party filed the aforesaid suit against Jagdish Prasad, defendant no.1 (deceased) and others. The said Jagdish Prasad was father of these petitioners who were substituted on his death. In course of trial, the father of these petitioners filed amendment petition on 31.07.1996 which after hearing was allowed on 15.10.1996 subject to payment of cost of Rs.55/-. The cost was deposited on the following date i.e. 11.12.1996. The trial of suit concluded and in course of argument it was detected that the amendment which was allowed by the court below on 15.10.1996 was not incorporated in the written statement of defendant no.1. These petitioners filed a petition on 09.07.2010 stating therein that their



father Jagdish Prasad died leaving behind these petitioners. The said amendment petition filed by their father was allowed and the petitioners had no knowledge about the said order. During trial, these petitioners adduced oral and documentary evidences in consonance with the amended pleading. The defect as regards non-incorporation was detected at the time of argument. The defendant no.14 being aggrieved by the said amendment order had filed Civil Revision No.110 of 1997 and so the matter remained pending for a long time. The petitioners' lawyer neither informed these petitioners as regards the said defect nor the defendant for want of knowledge incorporated the said amendment in the written statement. The plaintiffs and defendants were aware of the fact that amendment was allowed and cost had been deposited in court nazarat. The parties to the suit examined their witnesses in the light of amended written statement and the said witnesses were also cross-examined by the plaintiffs. The plaintiffs have not raised any objection against the said amendment and so if the amendments are allowed to be incorporated in the written statement, it will not prejudice the plaintiffs or the defendant no.14. I find that the petitioners have not committed any laches deliberately in incorporating the amendments in their written statement.

4. In view of above discussions and also for the ends of justice, the impugned order refusing the prayer of petitioners to



incorporate the amendment in the written statement is set aside and
this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.10.2018
Transmission Date	

