

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.21238 of 2014**

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Bibi Fatma @ Mosarrat Tara wife of Asim Zafar Khan and daughter of Late Wajahat Hussain Khan, resident of B.N.Jha Road, Murarpur, Police Station-Kotwali Town, and District-Gaya.

.... .... Petitioner/s

Versus

Md. Yasin Khan, son of Late Md. Sharafat Hussain Khan, resident of village-Madarpur, P.S.Dubariya, District-Gaya, at present residing at Mohalla-Murarpur, B.N.Jha Road, Gaya, Police Station-Kotwali, Town and District-Gaya.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rajib Ranjan Jha, Advocate  
Mr. Sanjay Kr. Sinha, Advocate

For the Respondent/s : Mr. Rai Saurabh Nath, Advocate  
Mr. Alok Anand, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 10-10-2018**

Petitioner is defendant in Partition Suit No.177 of 2000/43 of 2004 pending in the Court of Sub Judge-IV, Gaya. She has filed this application for setting aside the order dated 21.05.2014 whereby and whereunder her petition to amend the plaint was rejected.

2. Heard learned counsel for the petitioner and the respondent.

3. The respondent Md. Yasin Khan and his sister Bibi Wajida Khanam filed the aforesaid partition suit against this petitioner claiming two annas share in the land mentioned in schedule-1 of the plaint. Petitioner is the daughter of Most. Bibi Wajida Khanam. In course of trial, the petitioner filed an amendment petition to amend the plaint in order to enhance her share. It has been submitted that the



plaintiff by committing fraud and forgery took thumb impression of her mother and filed the suit describing her mother as plaintiff no.2. The mother of petitioner having come to know about the suit filed in her name, filed a petition on 08.10.2012 praying therein to transpose her as defendant no.2. Subsequently the mother of the petitioner died on 24.10.2002 and so the matter remained pending. By proposed amendment, the defendant wants to add same facts in her written statement to this effect that after the death of her mother, she became absolute owner of entire 16 annas share in the property mentioned in schedule-1 of the plaint. She further wants to add some facts to this effect that the plaintiff has committed fraud with the mother of this petitioner. He took thumb impression of her mother on several papers and brought into existence some documents for filing the suit and also for filing affidavit of her mother for using the same in evidence.

4. The learned counsel for the respondent opposed this writ application by submitting that the mother of this petitioner who was plaintiff no.2 had not filed any petition for transposing herself from the category of plaintiff to the category of defendant no.2. The suit was filed by the respondents and his sister as plaintiff nos.1 and 2. In course of evidence, the affidavit of plaintiff no.2 was filed in evidence. The petitioner (defendant) did not cross-examine the said witness and so the court below deferred the case for evidence of other



witnesses of the plaintiffs. In written statement which is on record, the defendant has not pleaded as regards any fraud or forgery in filing the plaint by her mother. The suit was filed in the year 2000 and the defendant filed written statement in the year 2003. The mother of petitioner died on 24.10.2012 and till her death, no objection was raised either by the plaintiff no.2 or the defendant. The genuineness of petition dated 08.10.2012 alleged to be filed by mother of the petitioner has been disputed by the plaintiff/respondent. The petitioner has challenged the oral gift by her mother in favour of plaintiff no.1. If she succeeds improving the oral gift she would certainly get the entire property left by her mother and so in this view of the matter she is not prejudiced by the impugned order whereunder the amendment petition was rejected.

5. In view of above discussions, I find that this application is devoid of merit and is accordingly dismissed.

**(Sanjay Kumar, J)**

B.Kr./-

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