

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20057 of 2012

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Pran Mohan Thakur Son of late Shiv Ram Thakur, resident of Basantpur Araria town, Araria.

.... Petitioners

Versus

1(a). Madan Prasad
1(b). Ramjee Prasad
1(c). Gopal Prasad

All the above three sons of late Kisun Prasad Sah, R/o of Mauje - Basantpur, Mohalla- Kalibazar, Ward No. 23 P.S. Araria Court, Distt. Araria.

2. Lalit Mohan Thakur, Son of late Shiv Ram Thakur of Bansantpur, Araria town, Araria.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Dharendra Kr. Jha, Advocate Mr. Madhura Nand Jha, Advocate
For the Respondent/s	:	Md. Abdul Kalam, Advocate Mr. Shashi Nath Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-05-2018

This writ application has been filed for setting aside the order dated 18.08.2012 passed by Ad-hoc Additional District Judge, Araria in Title Appeal No. 126 of 1998 whereby and whereunder the lower appellate court allowed the petition filed by the respondents under Section 152 and 153 of C.P.C. read with Section 5 of the Limitation Act.

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

3. The parents of respondent 1st party had filed Title Suit No.79 of 1982 before the learned Munsif, Araria which on contest



was decreed by Additional 1st Munsif as per judgment dated 26.09.1998. The defendant who is petitioner before this Court filed Title Appeal No. 126 of 1998 which came on the file of lower appellate Court for hearing. In course of hearing, the respondent 1st party (plaintiff) filed two petitions under Sections 152 and 153 of C.P.C. for incorporating amendment in the plaint which was allowed by Munsif court during trial after condoning the delay in filing the said petition. The appellant being aggrieved by the said order has filed this writ petition.

4. The learned counsel for the petitioner submits that the petition for amendment of plaint was allowed by learned Additional Munsif in the year 1988. The Plaintiff did not amend the plaint within statutory period and the trial proceeded and the suit was decreed on the basis of original plaint. The petitioner filed appeal against the said judgment and decree and when it was pending for argument, the respondent (plaintiff) filed a petition praying therein to permit them to make correction in the plaint as per order passed by trial court. The impugned order allowing the petitioner to amend the plaint after twenty years is not sustainable and is fit to be quashed.

5. The learned counsel for the respondents, on the other hand, submits that this is purely a clerical mistake. The court below



as per amended plaint has decreed the suit. The respondent (plaintiff) had filed the aforesaid suit for declaration of his title over the Municipal Survey Plot no. 366 and 369 appertaining to MS Khata No. 133. The said two plots correspond to RS Plot No. 8576 of RS Khata No. 607 and RS Plot No. 8575 of RS Khata No. 608. The Plot No. 8575 was wrongly typed as 8577 in the plaint. The Municipal Survey Plot No. 369 has been carved out of Plot No. 8575 and so the respondent filed amendment petition to substitute RS Plot No. 8577 by mentioning RS Plot No. 8575. Both the parties accordingly adduced evidence and the learned trial court decreed the suit in the following terms:-

“the suit be and the same is hereby decreed in favour of the plaintiffs with cost and on contest. It is hereby declared the Kaimi right of the plaintiffs over the M.S. Plot no.366 (ka), (kha), (ga) area 3 are 75 point, M.S. Plot no.369 area one are 15 point. It is further declared that the defendants have only Sikmi right over the M.S. Plot no.366 area 3 are 36 point towards southern portion of the said plot.....”

6. The learned trial court in paragraph 1 of its judgment has stated that the said Municipal Survey Plot no. 366 and 369 area 4 are 90 point corresponds to RS Plot Nos. 8576 and 8575. Thus, I find that the court below has taken into consideration the pleadings of the plaintiff as regards the disputed land of MS Plot No. 369. The plot was carved out of RS Plot No. 8575. Both the parties were/are



aware of the said facts. It is not in dispute that the judgment of the trial court is based on the Revisional Survey Plot No. 8575 and not on RS Plot No. 8577. The court below has not committed any error in allowing the said petition.

7. In view of above facts I do not find any jurisdictional error or illegality in the impugned order requiring any interference. This writ application is devoid of merit and is accordingly, dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.05.2018
Transmission Date	

