

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10147 of 2012

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1. Masomat Nirmala Devi widow of Late Yogendra Mahto, Resident of Village Mirzapur, Post Office Mirzapur, Police Station Ladaniyan, District Madhubani.
 2. Mohan Mahto, minor son of Late Yogendra Mahto, under the guardianship and next friend his mother Petitioner No. 1 Masomat Nirmala Devi, Resident of Village Mirzapur, Post Office Mirzapur, Police Station Ladaniyan, District Madhubani.
 3. Brahamdeo Mahto, minor son of Late Yogendra Mahto under the guardianship and next friend his mother Petitioner No. 1 Masomat Nirmala Devi, Resident of Village Mirzapur, Post Office Mirzapur, Police Station Ladaniyan, District Madhubani.

.... Petitioners

Versus

1. Sri Ram Sah, son of Sri Dubey Sah, Resident of Village Mirzapur, Post Office Mirzapur, Police Station Ladaniyan, District Madhubani.
2. Ganga Sah son of Sri Ram Sah, Resident of Village Mirzapur, Post Office Mirzapur, Police Station Ladaniyan, District Madhubani.
3. Chandan Sah minor Son of Sri Ram Sah under guardianship of Sri Ram Sah, Resident of Village Mirzapur, Post Office Mirzapur, Police Station Ladaniyan, District Madhubani.
4. Shivan Yadav son of Dev Nath Yadav, Resident of Village Mirzapur, Post Office Mirzapur, Police Station Ladaniyan, District Madhubani.
5. Srimati Samudri Devi wife of Rajendra Singh, daughter of Late Ramji Mahto, Resident of Village Mirzapur, Post Office Mirzapur, Police Station Ladaniyan, District Madhubani.

.... Respondents

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Appearance :

For the Petitioners : Mr. Santosh Kumar Sinha -2, Advocate
For the Respondents : Mr. Shashi Nath Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

9 16-01-2018 This writ application has been filed to set aside the order dated 16.03.2012 passed by learned Sub-Judge III, Madhubani in Title Suit No.158 of 2010 whereby and whereunder the amendment petition filed by the plaintiffs was rejected.

2. Heard learned counsel for the petitioners as well as



the respondents.

3. It appears that the aforesaid suit was filed by the petitioners for declaration of title and recovery of possession over the land mentioned in Schedule II of the plaint. The plaintiffs claim the suit property as their exclusive property by virtue of partition from their agnates. The defendants filed written statement and denied the case of the plaintiffs. The defendants claimed the suit property as their purchased land from the defendant no.5.

4. It has been submitted that the defendant no.5, Smt. Samudri Devi was daughter of Ramji Mahto, who was full brother of the husband of plaintiff no.1. The plaintiffs filed amendment petition on 09.01.2012 for inserting some facts. By proposed amendment the plaintiffs want to add one Nitu Kumari as plaintiff to the suit. The plaintiffs further want to add one Sita Devi as defendant to the suit. Besides that, the plaintiffs want to delete the father's name of Smt. Samudri Devi. It has been submitted that defendant no.5 claims to be daughter of Ramji Mahto. The husband of plaintiff no.1 had one more brother, namely, Ramji Mahto, who died issueless leaving behind two brothers. The wife of Ramji Mahto had already predeceased and so there was nobody to inherit his interest. The defendant no.5, Smt. Samudri Devi has started claiming to be the daughter of Ramji Mahto and by



projecting herself as daughter of Ramji Mahto, she has executed a sale deed in favour of defendants 1st set. This fact has already been pleaded at paragraphs 7 and 8 of the plaint. The plaint was drafted by the conducting lawyer in view of the registered sale deed executed by defendant no.5 in which the father's name of Smt. Samudri Devi is mentioned as Ramji Mahto. The plaintiffs further want to amend the plaint by way of correction which is purely a clerical error. All the amendments are simple in nature and do not change the nature of the suit. The suit is at initial stage and the amendment petition was filed immediately after the filing of written statement by the defendants.

5. In view of above discussions, the impugned order refusing to amend the plaint is set aside. The amendment petition filed on behalf of the petitioners is allowed. The defendants will have liberty to file additional written statement with respect to the amended portion of the plaint.

6. This writ application is, accordingly, allowed.

(Sanjay Kumar, J)

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