

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

**Civil Writ Jurisdiction Case No.21402 of 2014**

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1. Vidya Choubey

2. Dhrup Choubey

3. Janak Choubey

All three are S/o Late Jagarnath Choubey, Resident of Village Jigna Jagarnath, Post Office + Police Station Mirganj, District Gopalganj.

.... .... Petitioners

Versus

1. Bhagay Narayan Singh S/o Late Parshuram Singh

2. Mostt. Sage W/o Late Parshuram Singh

3. Anita Devi W/o Dinbandhu Choubey

All Resident of Village Jigna Jagarnath, Police Station Mirganj, District Gopalganj.

4. Rakesh Choubey

5. Rajan Choubey

Both are minor S/o Late Shankar Choubey through her mother and natural guardian Smt. Dharamwati Devi.

6. Dharmawati Devi W/o Late Shankar Choubey All Resident of Village Jigna Jagarnath, Post Office + Police Station Mirganj, District Gopalganj.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Shailendra Kumar Dwivedi, Advocate

For the Respondent/s : Mr. Rakesh Chandra, Advocate

Mr. Indrajeet Bhushan, Advocate

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

**ORAL JUDGMENT**

**Date: 27-06-2018**

Petitioners before this court are plaintiffs of Title Suit No.238 of 2008 pending in the court of Munsif, Gopalganj. They have filed this writ application for setting aside the order dated 12.11.2014 passed by court below whereby and whereunder the amendment petition filed by the petitioners was rejected.

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



3. By the proposed amendment the petitioners (plaintiffs) want to delete the figure '1996' and substitute the same by figure '1986'. According to the case of petitioners (plaintiffs) as pleaded in the plaint, a deed of conditional sale was executed in the year 1981 in favour of respondents (defendants). The petitioners (plaintiffs) returned the mortgaged amount in the month of December 1996. Now the petitioners (plaintiffs) want to substitute the year '1996' by mentioning '1986'.

4. The learned counsel for the respondents, on the other hand, submits that the plaintiff no.2 has been examined as P.W.5. In examination-in-chief, he has specifically stated that the mortgaged amount was given to the defendants in the year 1996. In cross-examination also he has stated that the amount was paid in the year 1996. It has been submitted that besides the plaintiffs, all other witnesses examined on behalf of the plaintiffs have stated that money was returned in the year 1996. By proposed amendment, the plaintiffs want to withdraw their admission made in the plaint as well as statement made by the witnesses during their evidence. Besides that, out of five plaintiffs, only three have filed writ application. The court below has rightly refused to amend the plaint.

5. On going through the impugned order and documents available on record, I find that the suit was filed in the year 2008 with



respect to a document which was executed in the year 1981. The defendants filed written statement immediately after filing of the suit. The defendants sold the said land on 18.11.1999. Both parties have closed their evidence and when argument commenced from the side of respondents (defendants), the petitioners (plaintiffs) filed amendment for substituting the year. The amendment withdrawing the pleading which finds support also from the evidence of plaintiffs’ witnesses cannot be allowed at the time of argument as it would require *de novo* trial.

6. In view of above facts, I do not find any merit in the present application and is accordingly dismissed.

**(Sanjay Kumar, J)**

Harish/-

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