

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18284 of 2012

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Rajendra Sah S/o Late Husaini Sah, resident of village- Laukhan Koraiya Tola, P.S- Ghorasaha, P.O- Kundwa Chainpur, District- East Champaran at present resident of village- Dhaka Ram Chandra Tola Chainpur, Brahm Asthan, P.O- Dhaka, P.S- Dhaka, District- East Champaran.

.... Petitioner/s

Versus

1. Chche Lal Sah S/o Late Hussaini Sah, resident of village - Laukhan Tola Koraiya, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran.
2. Smt. Krishna Devi W/o Achche Lal Sah and D/o Brahmdeo Sah, resident of village - Laukhan Tola Koraiya, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran.
3. Surendra Sah S/o Late Hussaini Sah, resident of village - Laukhan Tola Koraiya, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran.
4. Smt. Urmila Devi W/o Surendra Sah and D/o Jagdeo Sah, resident of village - Laukhan Tola Koraiya, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran.
5. Khajanti Sah S/o Late Hussaini Sah, resident of village - Laukhan Tola Koraiya, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran.
6. Smt. Phul Kanti Devi W/o Khajanti Sah and D/o Arjun Sah, resident of village - Laukhan Tola Koraiya, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran.
7. Mishri Lal Sah S/o Late Hussaini Sah, resident of village - Laukhan Tola, Koraiya, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran, At Present Resident Of Village- Dhaka Ram Chandra, Tola Chainpur Brahm Asthan, P.O- Dhaka, P.S- Dhaka, District- East Champaran.
8. Smt. Savitri Devi W/o Mishri Lal Sah, resident of village - Laukhan Tola, Koraiya, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran, At Present Resident Of Village- Dhaka Ram Chandra, Tola Chainpur Brahm Asthan, P.O- Dhaka, P.S- Dhaka, District- East Champaran.
9. Smt. Chinta Devi W/o Rajendra Sah, resident of village - Laukhan, Koraiya Tola, P.O- Kundwa Chainpur, P.S- Ghorasahan, District- East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Adv.

For the Respondent/s : Mr. Rama Nand Poddar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-04-2018

The petitioner is plaintiff of Title Suit No. 106 of 2008



pending in the court of 4th Sub-Judge, Motihari, East Champaran. He has filed this application for setting aside the order dated 26.07.2012 whereby and whereunder the petition for amendment of plaint filed by the plaintiff-petitioner was rejected.

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

3. The petitioner had filed the aforesaid suit for cancellation of registered deeds of gift executed by his four brothers in favour of their respective wives on 13.02.2008 with respect to the land mentioned in Schedule I to X of the plaint on the ground that the lands gifted by his brothers belong to the share of plaintiff which were allotted in his share as per oral partition held earlier. The petitioner filed a petition on 25.07.2011 for amendment of plaint in relief portion. He wants to add an alternative relief in the plaint that if the court disbelieves the case of earlier partition then the decree for partition to the extent of 1/5th share in his favour against the defendants and appointment of an Advocate Commissioner to carve out a separate patti to the extent of 1/5th share. The court below after hearing both sides, rejected the petition.

4. The learned counsel for the petitioner submits that in order to avoid multiplicity of litigation, the said relief may be granted in favour of the plaintiff, if it fails in proving the case of earlier



partition.

5. The learned counsel for the respondents on the other hand submits that the suit property is ancestral and has already been partitioned. After partition amongst five brothers, they have dealt with their land by executing several sale deeds in favour of the different persons. The plaintiff has sold his land which was allotted in his share and now he wants partition of those land which remained in possession of the defendants. The plaintiff cannot get relief for partition as he had prayed for cancellation of deed of gifts on different cause of action and so the court below has rightly refused to amend the plaint.

6. On perusal of plaint, which is annexed with this application, I find that the plaintiff has specifically asserted that the ancestral lands were partitioned among the plaintiff and defendants and both the parties got possession over their respective lands and accordingly they dealt the lands by executing sale deeds. The defendants fraudulently executed deeds of gift in favour of their respective wives with respect to those land which was earlier allotted in the share of plaintiff. The plaintiff has filed the suit for the cause of action which arose on account of executing the deeds of gift by the defendants. If his proposed amendment is allowed then it will cause prejudice to the respondents and the nature of suit will also change.



The petitioner has also executed document in favour of his brothers describing nature of his title over the disputed land.

7. In view of above discussion, I find that the court below has not committed any error in refusing the amendment. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19/04/2018
Transmission Date	

