

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1680 of 2012

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Laxman Mahto Son Of Late Kokai Mahto Resident Of Village - Dadhiya Asadhar,
P.S. Ujiyarpur, District - Samastipur

.... Petitioner/s

Versus

1. Ramashraya Pandey Son Of Late Jagdeo Pandey Resident Of Village -
Dadhiya Asadhar, P.S. Ujiyarpur, District - Samastipur
2. Ramsewak Mahto Son Of Late Devan Mahto Resident Of Village - Dadhiya
Asadhar, P.S. Ujiyarpur, District - Samastipur
3. Vipat Mahto Son Of Late Devan Mahto Resident Of Village - Dadhiya
Asadhar, P.S. Ujiyarpur, District - Samastipur
4. Ajvi Devi Daughter Of Late Yadu Mahto Resident Of Village - Dadhiya
Asadhar, P.S. Ujiyarpur, District - Samastipur
5. Rekha Devi Daughter Of Late Shivan Mahto Resident Of Village - Dadhiya
Asadhar, P.S. Ujiyarpur, District - Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MD. WALIUR RAHMAN, Advocate

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 14-08-2018

Petitioner before this Court is appellant of Title Appeal No.22 of 2006 pending in the Court of 3rd Additional District Judge, Samastipur. The petitioner had filed Title Suit No.06 of 1999 in the Court of Munsif. The said suit after contest was dismissed with cost as per judgment dated 15.02.2006 passed by Munsif, Dalsinghsarai. The plaintiff being aggrieved by the said judgment filed Title Appeal No.22 of 2006. The petitioner filed an amendment petition under Order 6 Rule 17 read with Section 107(2) of CPC for amending the plaint. The amendment petition was rejected as per impugned order



dated 23.03.2011. The present writ application has been filed to quash the said order and to allow the amendment.

2. Heard learned counsel for the petitioner.

3. It has been submitted that the said suit was filed for declaration of right and title over the land mentioned in schedule-2 of the plaint. The plaintiff further sought relief for delivery of possession after dispossessing the defendants. The petitioner has claimed the said land as his ancestral land which was recorded in the name of Murli Dhanuk and Dina Dhanuk. The defendants appeared and on contest the suit was decided against the plaintiff. It has been submitted that the court below while deciding the issue as regards right and title of the parties has given a clear finding that the plaintiff has acquired right title and possession over the disputed land on the basis of Cadastral Survey Khatiyan standing in the name of ancestor of plaintiff. The trial court has further observed that the defendant no.1 has not acquired any right and title on the basis of Samarpnama. The title of the plaintiff has been decided under issue nos.4 and 6 of the judgment. The court below however decided issue no.8 against the plaintiff and dismissed the suit on account of defect of parties as the state of Bihar was not made party to the suit.

4. The contention of learned counsel is that the petitioner is rightful owner of the suit property. The said land stands recorded in



the name of his ancestor. This fact has not been disputed by the defendants before the court below. The defendants however claimed title on the basis of oral surrender in his favour. The petitioner had no knowledge about the survey entry in the name of State of Bihar and so the State of Bihar could not be impleaded as party to the suit. The contesting respondents/defendants has encroached some of the portion of suit land and so the suit was filed only against the respondents for a decree of declaration of title and recovery of possession. The learned counsel in support of his submission has cited ruling reported in (1982) 3 Supreme Court Cases 408 wherein the Hon'ble Apex Court has held that Order 6, Rule 17 in terms provides that the court *may at any stage of the proceedings* allow either party to alter or amend his pleadings in such manner and on such terms as may be necessary for the purpose of determining the real questions in controversy between the parties.

5. In this regard, I would like to cite the observation of Hon'ble Apex Court in a case of ***Ganesh Trading Co. v. Moji Ram*** reported in ***AIR 1978 SC*** page **484** under para-2, wherein the Hon'ble Apex Court has held that procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to



determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.

6. In the case in hand, I find that the real dispute is regarding declaration of title on the basis of Cadastral Survey Khatiyan which admittedly stands in the name of ancestor of the petitioner. The petitioner has asserted that he had no knowledge about the revisional survey entry in the name of State of Bihar. The defendants were claiming land on the basis of oral Samarpnama and as he was creating trouble in his possession, he filed the suit only against the respondents. The court below although declared right title of the petitioner while deciding the issue but dismissed the suit on account of defect of parties as the State of Bihar was not party to the suit. Thus, I find that the petitioner bonafide filed the petition for impleading the State of Bihar as party to the suit.

7. In view of principle laid down by the Apex Court and avoid multiplicity of litigation, the impugned order is set aside and this application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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