

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3431 of 2016

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Jayanti Devi Wife of Sri R.N. Sharma, resident of Village: Mahua PO: Kaithi ,P.S
Obra, District -Aurangabad (Bihar).

.... Petitioner

Versus

1. Smt. Champa Devi, Daughter of late Kamlapati Pathak, Wife of Sri Gauri Shankar Pandey, Resident of Village+PO- Jaipur , P.S.- Mali, District -Aurangabad (Bihar), at present resident of Village Mahua, P.S.- Obra, District -Aurangabad (Bihar).
2. Rahul Kumar son of Sri R.N. Sharma, resident of Village: Mahau, P.S.- Obra, District - Aurangabad (Bihar).
3. Deomani Devi, Wife of Sri B.K. Pandit, Resident of Village: - Akraunja. P.S.- Uphara, District –Arwal, at Present Indira Nagar, Q.No. 351 (Near D.A.V. School), Lucknow (U.P).

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar, Advocate
Ms. Kushum Kumari, Advocate
For the Respondent/s : Mr. Shailesh Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-09-2018

Petitioner before this court is defendant of Partition Suit No.277 of 2012 pending in the court of Subordinate Judge IV, Aurangabad. She has filed this writ application for quashing the order dated 05.11.2015 whereby and whereunder the amendment petition filed by this petitioner to amend her written statement was rejected.

2. Heard learned counsels for the petitioner as well as the respondents.

3. It appears that the respondent no.1 filed the aforesaid suit for partition of ancestral property. The defendants appeared and filed written statement. In written statement, she has taken a plea that



after the death of her father and mother within two and half years her uncle Muneshwar Pathak adopted her. In her written statement at paragraph 11, she has specifically asserted that her father died about 63 years ago leaving behind her when she was aged about six months and her mother also died when she was aged about 2 years 6 months. She has further stated that after death of her father and mother, her uncle Muneshwar Pathak out of love and affection adopted her and in this situation there was re-union in the property of Late Bhuneshwar Pathak and Muneshwar Pathak. The petitioner filed an amendment petition to substitute the word “he has” by word “Muneshwar Pathak” in order to clarify the case of adoption. This amendment is just in consonance with the pleading made in paragraph 11 of the written statement. The amendment sought for is formal in nature and it will not require any further evidence either in support of the case of defendants or in rebuttal by the plaintiff.

4. In view of above facts and circumstances, the impugned order refusing to allow amendment petition is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.09.2018
Transmission Date	

