

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.150 of 2016

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1. Champa Devi W/o Ramagaya Singh Resident of Village Saraiya P.O.
Kairi Gao P.S. Shhabgani District Chandauti- U.P.

.... Appellant/s

Versus

1. Narwada Devi@ Chamely Devi W/o Rajesh Singh, D/o late Gopal Singh
Resident of Village Kaithi Tada, P.O. + P.S. Chaubepur, District Varansi
(U.P).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Uday Pratap Singh

For the Respondent/s : Mr. Sumit KUMAR SINGH

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

6 21-06-2018 Heard learned counsel for the petitioner Mr. Uday Pratap Singh and learned counsel for the respondent Mr. Sumit Kumar Singh.

The petitioner has filed the Civil Misc. petition against the order dated 16.01.2016 passed in Title Suit No. 276 of 2010 by which the petition of the petitioner for amendment of the plaint has been rejected.

Learned counsel for the petitioner submits that the petitioner filed Title Partition Suit no. 276 of 2016. The suit was preliminary decreed on 12.02.2014 and preliminary decree was also prepared. But after the preparation of the preliminary decree the plaintiff came to know that on account of inadvertence some



plots are left to be mentioned and some wrong plots have been mentioned in the schedule -1 of the plaint. It is further submitted that the plaintiff came to know that the defendant had sold some piece of land and also exchanged some lands but that facts of exchange of lands are required to be incorporated. The defendant did not object the amendment petition but the learned Sub-Judge on the ground that the amendment petition is brought after preparation of the preliminary decree illegally rejected the same. Mr. Sumit Kumar Singh, learned counsel for the respondent submitted that the plaintiff not only wanted to delete some plots but also wanted to claim $1/3^{\text{rd}}$ share instead of $2/9$ share in the suit property. Therefore, the amendment has rightly been rejected.

On perusal of the order impugned it appears that plaintiff filed an amendment petition only for insertion of certain plots and deletion of certain plots on the ground that plots were exchanged for some other plots and some plots were sold. The suit is of partition. Even after preparation of preliminary decree if the plaintiff came to know about missing of some plots or change of some plots the plaintiff may amend the plaint that will not change the nature of the suit. The defendant did not object amendment petition in the court below. Having considered the aforesaid facts I find that the learned Sub Judge has illegally rejected the



amendment petition of the plaint. Accordingly, the order dated 16.01.2016 passed in Title Suit No. 276 of 2010 is set aside and the matter is remitted to the court below to pass order afresh after hearing both sides. Civil Miscellaneous petition is accordingly allowed.

(Prabhat Kumar Jha, J)

AnilKrSinha/-Sneha

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