

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22388 of 2013

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Lalita Devi W/O Jogi Mandal Resident Of Village- Akbarnagar, P.O & P.S-
Akbarnagar, Distt- Bhagalpur

.... Petitioner/s

Versus

Kapildeo Mandal S/O Late Sudin Mandal Resident Of Village- Akbarnagar, P.O &
P.S- Akbarnagar, Distt- Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. VIVEKANAND VIVEK, Advocate
For the Respondent/s : Mr. None.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 31-10-2018

Petitioner before this Court is plaintiff of Title Suit
No.171 of 2003 pending in the Court of Sub Judge-VIII,
Bhagalpur. He has filed this application for quashing the
order dated 01.08.2013 whereby and whereunder the prayer
of respondent to amend the written statement was allowed.

2. Heard learned counsel for the petitioner. Nobody
appeared for the respondent.

3. It appears that the petitioner filed the aforesaid
suit for specific performance of contract on the basis of
Zerbiyana dated 22.01.2001. The defendant appeared and
filed written statement. In course of trial, the defendant filed



amendment petition praying therein to substitute the word 'Zerbiyana' by mentioning the word 'usufractory mortgage' in some of the paragraphs of the written statement. It has been submitted that by said amendment, the defendant has withdrawn his admission of execution of Zerbeyanama deed. The court below has committed error in allowing the amendment which is not permissible after commencement of trial. The written statement was filed on 11.01.2008 but the defendant remained silent for about five years and suddenly filed amendment petition in order to withdraw his admission.

4. On going through the amendment petition and pleadings of both the parties as pleaded in the plaint and written statement which has been produced by the learned counsel, I find that the defendant in his written statement has denied the execution of Zerbeyanama deed or receiving any earnest money for executing any sale deed in favour of the plaintiff. The defendant in clear words have asserted that he had contacted the plaintiff for loan which was accepted by the plaintiff and on the basis of oral mortgage he had given



the money. The document in question was executed for the purpose of security of said loan amount which was purely an usufractory mortgage. The amendment which has been allowed by the court below is formal in nature and just in consonance with the pleadings of the defendant wherein he has asserted in several paragraphs that he had not executed any document like Zerbeyanama.

5. In view of above discussions, I find that the court below has not committed any error in allowing the amendment. This writ application as such is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
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