

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9781 of 2012

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Chandrika Prasad Singh @ Chandrika Singh son of Late Mahipal Singh, resident of village + P.O. Chapra Dharampur Jadu, P.S.- Kanti, District – Muzaffarpur.

.... Petitioner/s

Versus

1. Bhuneshwar Rai son of Bathu Rai, resident of village - Sadatpur, P.O.- Kolhua Paigambarpur, P.S. - Kanti, District – Muzaffarpur.
2. Amardeo Singh son of Late Tapeswar Singh, resident of village- Chapra, Dharampur Jandu, P.S.- Kanti, District – Muzaffarpur.
3. Smt. Deepika Sinha W/o late Maheshwar Pd. Singh
- 4 (i)Shakuntala Devi W/o Late Chandeshwar Pd. Singh
(ii)Malay Mayank son of Late Chandeshwar Pd. Singh
5. Nirmala Kumari daughter of Late Bindeshwar Singh, resident of village- Chapra, Dharampur Jandu, P.S.- Kanti, District – Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Prasad, Adv.

For the Respondent/s : Mr. Manoj Kumar Manoj, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-11-2018

Petitioner before this Court is plaintiff no. 4 in Title Suit No. 42 of 2005. He has filed this writ application for quashing the order dated 12.03.2012 passed by Sub-Judge-VIII, Muzaffarpur whereby and whereunder the court below disallowed the amendment petition filed by him.

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

3. This petitioner and respondent 2nd party filed the aforesaid suit for declaration that the two registered sale deeds dated 28.10.2004 executed by Mosmat Kalawati Devi in favour of



defendant 1st party with respect to land mentioned in schedule-I of the plaint are illegal and void. The defendants appeared and filed written statement on 05.12.2005. When the case was pending for trial, the plaintiff filed an amendment petition on 02.06.2011 which was allowed by the court below.

4. The learned counsel for the petitioner submits that the vendor of the defendants is widow of elder brother of this petitioner who allegedly executed sale deed with respect to ancestral land. The suit has been filed for declaring the said sale deeds as illegal and void. In order to seek preferential right to get the said land re-conveyed in favour of the plaintiffs, they had filed an amendment petition. The prayer of the plaintiffs to grant an alternative relief is based on the same pleading. The land in dispute is homestead land having their house in some portion of the land and so they have got preferential right.

5. The learned counsel for the respondents on the other hand submits that the land in dispute is agricultural land and after purchase, the defendants have constructed Bathan and Sahan over the same. The respondents in support of their contention, have referred copy of khatian, which is annexed with the counter affidavit .

6. On going through the pleadings of both the parties, amendment petition and impugned order, I find that the plaintiff wants



to seek an alternative relief. The issue as to whether the plaintiff has preferential right to get the land reconveyed, is a matter of fact to be adjudicated at the time of trial. The trial of the suit has not commenced as none of the parties have examined any witness. The plaintiffs want to amend only in relief portion as alternative relief on the basis of the facts already pleaded in the plaint. These amendments do not prejudice the defendant as the trial has not commenced.

7. In view of above discussions and in order to avoid multiplicity of the suit, the impugned order refusing to amend the plaint is set aside and this writ application is allowed, subject to payment of cost of Rs.3,000/- to the defendants. The court below, however, is directed to give an opportunity to the defendant to file additional written statement with respect to amended plaint if so required.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03/11/2018
Transmission Date	N/A

