

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10521 of 2013

=====

Guddi Devi W/O Devendra Tiwari, D/O Sarvajeet Narayan Mishra resident of Village - Rahatauwa, P.O. Belaur Pargana Chaubar, P.S. & Circle Darauli, District - Siwan At Present Village Majhwalia, P.O. Lohgajar, P.S. Asanaw Block Darauli, District - Siwan

... .. Petitioner

Versus

1. Gopal Jee Mishra son of Late Ramakant Mishra Permanent resident of Village Rahtawa, Pargana Chaiban, P.O. Belaon, P.S. & Circle Darauli, District - Siwan
2. Neeraj Mishra son of Late Vashistha Narayan Mishra resident of Janta Backery, Middle Point Port Blair Andaman Permanent resident of Village Rahtawa, Pargana Chaiban, P.O. Belaon, P.S. & Circle Darauli, District - Siwan
3. Nikunj Mishra son of Late Vashistha Narayan Mishra resident of Janta Backery, Middle Point Port Blair Andaman Permanent resident of Village Rahtawa, Pargana Chaiban, P.O. Belaon, P.S. & Circle Darauli, District - Siwan
4. Nipunj Mishra son of Late Vashistha Narayan Mishra resident of Janta Backery, Middle Point Port Blair Andaman permanent resident of Village Rahtawa, Pargana Chaiban, P.O. Belaon, P.S. & Circle Darauli, District - Siwan
5. Yogendra Mishra son of Late Kapil Mishra Permanent resident of Village Rahtawa, Pargana Chaiban, P.O. Belaon, P.S. & Circle Darauli, District - Siwan
6. Uma Shankar Mishra Permanent resident of Village Rahtawa, Pargana Chaiban, P.O. Belaon, P.S. & Circle Darauli, District - Siwan
7. Bhim Mishra son of Kamal Mishra Permanent resident of Village Rahtawa, Pargana Chaiban, P.O. Belaon, P.S. & Circle Darauli, District - Siwan

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr. Kaushal Kishore Mishra, Advocate
For the Respondent/s : None

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 20-11-2018

Plaintiff of Partition Suit No.535 of 2008 pending in the court of learned Subordinate Judge VIII, Siwan has filed this writ application for quashing the order dated 04.04.2013 whereby and whereunder her prayer to amend the plaint was



rejected.

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

3. It appears that this petitioner filed the aforesaid partition suit against her father and other family members claiming share to the extent of 1/18. The defendant nos.2 to 18 filed written statement and admitted the share of plaintiff in paragraph 8 of the written statement. The defendants in their written statement disclosed that the defendant no.1 who was father of the petitioner executed some sale deeds in favour of defendants and their family members and in order to get the said deeds declared forged, fabricated, void and illegal, the petitioner filed an amendment petition before the court below on 24.09.2012. By proposed amendment, the petitioner wants to add some facts in paragraph 6 of the plaint to this effect that the defendant Taraknath Mishra and the husband of Malti Devi in collusion with each other brought into existence two registered sale deeds dated 26.06.2008 and 27.06.2008 without any consideration. She further sought relief to declare both the sale deeds as forged fabricated and not binding on the plaintiff. She further wants to add the land mentioned in the said sale deeds under Schedule III of the plaint. The court below has



framed issue and the case is at the initial stage of hearing.

4. It has been submitted that the petitioner is daughter of defendant no.1 and after marriage she was residing at her sasural and so she had no knowledge about the execution of said sale deeds. The court below rejected the prayer of the petitioner observing that no explanation has been given for filing amendment petition at such belated stage. I find that the suit was filed on 25.10.2008 and petitioner got knowledge about the said two documents in favour of defendants only after filing of written statement by the defendants. The court below ought to have allowed the amendment in order to adjudicate all the issues and also to avoid multiplicity of suit.

5. In view of above facts, the impugned order is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.11.2018
Transmission Date	

