

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CIVIL MISCELLANEOUS JURISDICTION No.1418 of 2018**

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Rakesh Kumar son of Shri Baiju Singh resident of village - Amhara, Police Station - Bihta, District - Patna.

.... .... Appellant/s

Versus

1. The State of Bihar through Collector, Patna.
2. The Collector, Patna, Collectorate Compound under Gandhi Maidan Police Station, District Patna.
3. Land Acquisition Officer, Collectorate Compound under Gandhi Maidan Police Station, District Patna.
4. Krishna Singh son of Late Praduman Singh
5. Binod Prasad Sharma son of Ram Udar Singh
6. Manorma Devi wife of Yogendra Prasad Singh No. 4 to 6 are residing of Village - Amhara, Police Station - Bihta, District - Patna.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sukumar Sinha, Sr. Adv.

For the Respondent/s : Mr. RISHI RAJ SINHA -SC19

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date: 01-10-2018**

Heard Mr. Sukumar Sinha learned senior counsel appearing on behalf of petitioner and Mr. Siddharth Harsh learned counsel appearing on behalf of respondents no. 4 to 6 and Mr. Saurabh Kumar learned counsel appearing on behalf of respondents 1 to 3/defendant Ist Set.

The petitioner filed this Civil Miscellaneous petition against order dated 01.08.2018 passed by Sub-Judge VII, Patna in Title Suit No. 25/2013 by which the petition of the petitioner filed under Order VI Rule 17 of Code of Civil Procedure for amendment in the plaint



has been rejected.

Learned senior counsel for the petitioner submits that plaintiff stated in the amendment petition that during course of argument it transpires that defendant nos. 4 to 6 filed translated copy of two registered deeds executed on 30.08.1938 as Exhibit A/1 and Exhibit B. The plaintiff came to know after going through the translated copy of two registered deeds that Patta Dwami was executed and registered firstly on 30.08.1938 and subsequently, the sale deed was executed on 30.08.1938 by Ram Awatar Prasad in favour of Baij Nath Prasad Singh. The number of sale deed shows the circumstances by which it can be concluded that Baij Nath Prasad Singh had executed Patta Dwami without having title over the property that is why he wanted to insert certain sentence after para 8 of the plaint as para 8(a), but the learned Sub-Judge VII, Patna held that the amendment sought for by the petitioner/plaintiff is unwarranted as being alien to his case and the plaintiff appears to have filed amendment petition for causing delay. Mr. Sukumar Sinha learned senior counsel for the petitioner further submits that petitioner wanted only to insert para 8(a) disclosing this fact that Patta Dwami was firstly executed by Baij Nath Prasad Singh and thereafter, the sale deed was executed. The plaintiff does not want to adduce any evidence, as the defendants themselves have produced two registered



deeds and there is no need of adducing any further evidence.

Contending and controverting the submission of the petitioner's counsel Mr. Siddharth Harsh learned counsel appearing on behalf of respondents IInd Set submitted that suit is at the fag end of the argument. The plaintiff wanted to linger the case, but when his attention is drawn to the fact that the plaintiff does not want to adduce any further evidence, learned counsel for the respondents submits that proviso of Order VI Rule 17 does not allow a party to amend one's pleading after start of hearing of the suit unless due diligence is shown for bringing any such amendment prior to start of hearing of the suit.

Having considered the submissions of both sides, I find that the plaintiff wanted to insert certain sentence on the basis of two registered deeds brought on record on behalf of defendant IInd Set that the Patta Dwami was executed by a person who had no title over the land. Admittedly, this fact was not in the knowledge of the plaintiff before those two registered deeds were brought on record. Thus, I find that even the proviso of Order VI Rule 17 says that if the plaintiff is able to show his due diligence for not bringing those facts before beginning of hearing the suit, the amendment should be allowed. I also find that the amendment is necessary for resolution of disputes between the parties. Accordingly, order dated 01.08.2018 is set aside. The amendment is allowed.



The defendants would be at liberty to file additional W.S. if they so require.

Consequently, this Civil Miscellaneous petition is allowed.

**(Prabhat Kumar Jha, J)**

Vinita/-

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