

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12909 of 2014

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1. Kapildeo Prasad S/o Late Saryug Mahto, Resident of Village- Kharati, Post Office- Taraiya, Police Station- Taraiya, District- Saran
2. Bibhav Chand, S/o Kapildeo Prasad, Resident of Village- Kharati, Post Office- Taraiya, Police Station- Taraiya, District- Saran
3. Paspati Devi, W/o Late Uma Shankar Singh, D/o Sri Kapildeo Prasad, Resident of Village- Kharati, Post Office- Taraiya, Police Station- Taraiya, District- Saran
4. Usha Devi, W/o Sri Surendra Singh, D/o Sri Kapildeo Prasad, Resident of Village- Gabandri, Post Office- Gabandri, Police Station- Taraiya, District- Saran

.... Petitioners

Versus

1. Nathni Manjhi, S/o Dev Lal Manjhi
2. Bimal Manjhi, S/o Shiv Saran Manjhi Both are Resident of Village- Bahuara Patti, P.S.- Marhora, Dih- Nagra, District- Saran
3. Jaglal Manjhi, S/o Nand Lal Manjhi, Resident of Village- Bahuara Patti, P.S.- Marhora, Dih- Nagra, District- Saran and at present residing at village- Tujarpur, P.S.- Khaira, Dih- Tujarpur, District- Saran

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Avinash Kumar, Advocate
Mr. Ajit Kumar, Advocate
For the Respondent/s : Mr. Pravin Kumar, Advocate
Mr. Satya Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

4 13-02-2018 The petitioners are plaintiffs of Title Suit No.11 of 2000.

They have filed this writ application for setting aside the order dated 17.06.2014 passed by learned Munsif-III, Saran at Chapra whereby and whereunder the prayer of the petitioners to withdraw the suit without giving them liberty to institute fresh suit was allowed.

2. Heard learned counsel for the petitioners as well as the respondents.



3. It has been submitted that the petitioners filed an application under Order 23 Rule 1 of C.P.C. praying therein to permit them to withdraw the suit with liberty to file a suit afresh. It is submitted that at the time of preparation of evidence, the plaintiffs came to know that some facts could not be mentioned in the plaint. The said defect in plaint was of such a nature that it was not possible to remove through amendment and so liberty was sought for filing the suit afresh. The learned court below has not assigned any reason for refusing to give liberty to file fresh suit to the petitioners. The court below ought to have given liberty in view of the provisions made under Order 24 Rule 3 (b) of C.P.C. In this regard, the learned counsel for the petitioners cited paragraph 12 of ruling reported in A.I.R. 2006 Madras 156, which runs as follows:-

“12. An application to withdraw the suit with liberty to file a fresh suit must either be allowed or refused in toto. It is not open to the Court to grant a prayer for withdrawal and refuse the leave. If liberty is refused, the suit should not be dismissed, but must be retained in the file for trial/continuation of trial. If an application is made for withdrawal of the suit with liberty to file a fresh suit, it is not open to the Court to grant only permission for withdrawal, without liberty to file a fresh suit. If the Court simply allows withdrawal but refuses liberty, the Court would be acting without jurisdiction in dividing the petition into two parts. It is to be noted that the Application under Order 23, Rule 1(3) of CPC is indivisible whole. The trial Court was not right in separating the prayer for withdrawal and the leave to file a



fresh suit. When the Court has declined to grant leave to file a fresh suit, the trial Court ought to have dismissed the application in toto.”

4. In the case, in hand, I find that the court below allowed the prayer of the petitioners and permitted them to withdraw the suit but prayer for instituting a fresh suit was rejected. I further find that the petitioners had filed a petition on 20.01.2014 under Order 6 Rule 17 of C.P.C. for amending the plaint and also to add some persons as party to the suit under Order 1 Rule 10 of C.P.C. The prayer for amendment and impleading some persons as party to the suit was not considered and the court below simply permitted the plaintiffs to withdraw the suit. By the impugned order, the petitioners have been prejudiced as after withdrawal of the suit they have become remediless as their prayer to amend the plaint remained pending.

5. In view of above discussions, the order allowing the petitioners to withdraw the suit without giving them liberty to institute a fresh suit is not sustainable in the eyes of law. The impugned order is, accordingly, set aside and liberty is granted to the petitioners to file a suit afresh.

6. This writ application is, accordingly, allowed.

(Sanjay Kumar, J)

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