

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14945 of 2010

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1. Rameshwar Singh S/o Late Vidyadhar Singh,
2. Chandra Bhushan Singh S/o Rameshwar Singh,
3. Ashok Kumar Singh S/o Rameshwar Singh,
4. Indra Kumar Singh S/o Rameshwar Singh,
5. Deo Bhushan Singh S/o Rameshwar Singh,
6. Bashistha Singh S/o Late Dwarika Singh,
All are resident of village-Shahpur, P.S.-Shahpur, Distt-Patna. Petitioner/s
Versus

1. Alakh Niranjana Singh S/o Late Mahabir Singh, resident of village - Shahpur,
P.S.Shahpur, Distt.-Patna
2. Binay Kumar S/o Alakh Niranjana Singh, resident of village - Shahpur,
P.S.Shahpur, Distt.-Patna
3. Kundan Kumar (Minor) S/o Alakh Niranjana Singh through Natural Guardianship
Alakh Niranjana Singh, resident of village - Shahpur, P.S.Shahpur, Distt.-Patna.
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P. Sharma, Advocate
For the Respondent/s : Mr. L.N. Das and Nasir Alam

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-01-2018

This application has been filed to set aside the order dated 19.05.2010 passed by the learned Sub Judge-III, Danapur in T.S. No. 75 of 1999 whereby and whereunder the amendment petition filed by the plaintiffs was allowed.

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

3. The father of respondents filed T.S. No. 75 of 1999 against the petitioners for declaration of title over the land mentioned in schedule of the plaint. The defendants filed written statement. Thereafter, the plaintiffs of T.S. No. 75 of 1999 filed



amendment petition. The Court below as per impugned order allowed some correction in the area of suit land and also inserted relief of confirmation of possession and recovery of possession over the land if found dispossessed during the pendency of suit.

4. The contention of the learned counsel for the petitioners is that the grandmother of the petitioners had purchased land of survey plot nos. 212 and 213 by virtue of registered sale deed dated 13.09.1954 out of her own money. During the period of jointness, she came in exclusive possession over the said land as absolute owner. The father of respondent 1st set filed T.S. No. 132 of 1979 claiming partition of the ancestral property mentioned in schedule-I and II of the plaint in which he included 25 decimal of plot no. 213 and mentioned area of plot no. 212 as 1 acre. The father of respondent accepted the right, title and possession of the grandmother of the petitioners. The said suit was compromised and the land was allotted in the share of the parties. The father of plaintiff filed Miscellaneous Case No. 32 of 1980 to set aside the said compromise decree. The said miscellaneous case was dismissed holding that the compromise was valid and genuine. Thereafter, the plaintiff of T.S. No. 132 of 1979 filed a petition under section 152 of Code of Civil Procedure for amendment of compromise decree with respect to area of plot nos. 212 and 213. The said amendment



petition was allowed without notice to the then defendants who moved High Court and filed Civil Revision No. 250 of 1997. The order allowing amendment was set aside and the matter was remitted for fresh hearing after giving opportunity to the concerned parties. The matter was again heard by the Sub Judge-IX and amendment petition was rejected. The plaintiff filed Civil Revision No. 1690 of 1998 against the said order which after hearing was dismissed. Thereafter, an appeal (SLP [Civil] No. 5277 of 1999) was filed which was also dismissed.

5. It has been submitted that the present amendment petition has been filed only to avoid the compromise decree which was passed against the father of the respondents. The suit of plaintiffs is also hit by *res judicata*, as the matter has already been adjudicated earlier. The learned counsel for the respondents on the other hand submits that the Court below finding the amendment simple in nature, has rightly allowed the petition.

6. In this case, I find that the witnesses of the plaintiff have already been examined and the defendants have also examined two witnesses on their behalf. The case is virtually at the stage of final disposal. The plea of *res judicata* and the grounds taken by the petitioners has to be decided as per issues settled by the Court below. The Court below finding the simple nature of amendment, has rightly



allowed the petition as per impugned order. I do not find any jurisdictional error in allowing the amendment petition.

7. In view of above discussion, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.01.2018
Transmission Date	

