

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17150 of 2014

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1. Smt. Indu Devi wife of Late Baban Rai
2. Prince Kumar son of Late Baban Rai, Both residents of village - Belhi, Balarampur, P.S. Mufassil - Chousa, at present resident of village and P.O. Ekwari, P.S. Sahar, District – Bhojpur.

.... Petitioner/s

Versus

1. Prativa Devi wife of Sunil Rai
2. Sushila Devi wife of Upendra Rai
3. Upendra Rai son of Chabila Rai
All residents of Village - Pulia, P.S. Buxar Mufassil, District – Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anish Chandra Sinha, Adv.

For the Respondent/s : Mr. Gopal Govind Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 25-04-2018

This application has been filed by the plaintiffs of Title Suit No. 146 of 2009 pending in the court of Sub-Judge-V, Bhojpur, Ara for setting aside the order dated 05.08.2014 whereby and whereunder the amendment petition filed by the petitioners was rejected.

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

3. The plaintiff no. 1 and her minor son, who are petitioners before this Court had filed Title (Partition) Suit No.146 of 2009 against Baban Rai, who was husband of petitioner no. 1 and the father of petitioner no. 2, for partition of suit property mentioned in schedule-I and II of the plaint. The land mentioned in schedule-I was purchased by the husband of petitioner no.1 from the income of ancestral property which has been



mentioned in the schedule-II of the plaint. The husband of petitioner no 1 under influence of intoxication executed several sale deeds in favour of different persons without any necessity. The petitioner no. 1 filed an application before the court below under Order VI Rule 17 of Code of Civil Procedure for adding the purchasers as party to the suit. The prayer was allowed and the plaint was amended on 12.03.2012. The purchasers were impleaded as defendant nos. 2 to 4. During the pendency of the suit, the defendant no.1, who was husband of petitioner no.1, died and his name was expunged from the record on 20.12.2010. The petitioners have stated that the petitioner no.1 is an illiterate lady and her son petitioner no.2 was minor at the time of filing of the suit. The petitioner no.2 attained majority in the year 2012. The petitioners having come to know about the documents, which were executed by their husband/father, filed amendment petition on 27.11.2013 for amending the plaint, which was rejected by the court below as per impugned order.

4. The learned counsel for the petitioners submitted that the proposed amendments are simple in nature. The plaintiffs want to get declaration with respect to all the six sale deeds, which were executed by their husband/father as fraudulent, illegal and not binding on the plaintiffs. The other amendments relate to valuation of suit property according to the said sale deeds. The defendants are purchasers from the defendant no.1 Baban Rai (since dead) and so they are not prejudiced by the said amendment. The case is at the initial stage of trial and so amendment if allowed it will not change the nature of the suit.



5. The learned counsel for the respondents on the other hand submits that the plaintiffs have filed the amendment after much delay and so the same has been rightly rejected.

6. On perusal of plaint and documents on record, I find that the suit was filed in the year 2009. The plaintiff no.1 is a lady, who claims to be illiterate and petitioner no. 2 is son of petitioner no. 1 and at the time of filing of suit, he was minor. The petitioner no. 2 attained majority in the year 2012-13 and they immediately filed amendment petition without causing any delay. The defendants although have filed written statement but trial has not commenced. The amendment appears simple in nature which relates to declaration with respect to said sale deeds which were allegedly executed in the state of intoxication.

7. In view of above facts, the impugned order dated 05.08.2014 is set aside and this application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02/05/2018
Transmission Date	

