

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11083 of 2013

1. Rafique Mian @ Md. Rafique Alam
2. Md. Safi Alam @ Safi Alam, both are sons of Md. Serajuddin, resident of village-Indarwa Khas, P.O. + P.S. Thawe, District-Gopalganj

... .. Petitioner/s

Versus

1. Isamuddin,
2. Mahmuddin, both are sons of late Aliraja Mian, resident of village-Indarwa Khas, P.O. + P.S. Thawa, District-Gopalganj at present resident of village-Dulldaliya, P.S. Majhagarh, District-Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Dwivedi, Advocate
For the Respondent/s : Mr. Yogendra Prasad Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

8 22-03-2018 The plaintiff of Title Suit No.236 of 2010 pending in the Court of Sub Judge-IV, Gopalganj has filed this application for setting aside the order dated 12.04.2013 whereby and whereunder the amendment petition filed for amendment in the written statement was allowed.

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

3. It appears that the petitioners have filed Title Suit No.236 of 2010 for declaration of title and recovery of possession. The plaintiff have further sought relief for injunction against the defendants. According to case of plaintiff the land of Khata no.18 and 19 was recorded in the name of Jumai Mian who had two sons, namely, Ishak and Yoli. The said Ishak had four sons and as per partition among four sons, the youngest son, Ali Raja got share in the land of his father who in due



course gifted his share to his wife Sahiban Khatoon as debt amount (Dain Mehr) by virtue of deed dated 04.09.1986. The wife of Ali Raja subsequently gifted the said land to the plaintiff by virtue of registered deed of gift dated 27.04.1992. The defendants appeared and filed written statement. After closure of evidence of both the parties, the case was fixed for argument. During the course of argument, the defendants filed petition for amendment of his written statement which after hearing was allowed by the court below. The learned counsel for the petitioners submits that the defendants want to withdraw the admission of execution of a document which is the very basis of the suit. In para-9 of the plaint, the plaintiff has asserted that Md. Ali Raja gifted the land in favour of his wife executing registered deed dated 04.09.1986. The defendants in their written statement at para-22 has admitted the execution of said document but they asserted that the said document was null and void as the same was executed with respect to excess area which was beyond the share of Mohd. Ali Raja and so the plaintiffs did not get possession on the basis of forged and fabricated document. The defendants by proposed amendment wants to withdraw the said admission by inserting new facts to this effect that Ali Raja had not executed any document on 04.09.1986.



The plaintiffs claim his title on the basis of said deed which has been admitted by the defendants. The amendment petition has been filed after closing the evidence of both the parties and on account of allowing the amendment, the plaintiffs would be required to rebutt the allegation made in the written statement which virtually amounts denovo trial of the suit. The defendants have not assigned any reason for filing the amendment petition at such belated stage. By amendment, he wants to withdraw the admission made with respect to the document which is very basis of the suit of the plaintiff.

4. In view of above facts, the impugned order allowing the amendment is not sustainable. As such, the impugned order is set aside and this application is allowed.

(Sanjay Kumar, J)

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