

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2193 of 2017

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1. Smt. Fulmati Devi Wife of Ramashish Choudhary, D/o late Bhagrashan Choudhary Resident of Village Khane Sauhari Ram Nagar, P.S. Bhorey, District Gopalganj, At Presently residing at Khaus Padari, Village Kalyanpur, Pargana Kuwari, P.O. Kalyanpur, P.S. Bhorey, District Gopalganj.

.... Petitioner/s

Versus

1. Smt. Lalmati Devi Wife of Dudh Nath Choudhary, D/o late Bhagrashan Choudhary, By Caste Ahir of Village Khaus Sanhari Sirisiya Missir, P.S. Khampar, , District Deoria, At Presently residing at Khane Padari of Village Kalyanpur, Pargana Kuwari, P.O. Kalyanpur, P.S. Bhorey , District-Gopalganj.

2. Smt. Jaimati Devi Wife of Babulal Choudhary, D/o late Bhagrashan Choudhary Of Village Khane Sauhari Khamipur, P.S. Khamipur, District Deoria (U.P), At Presently residing at Khane Pedari of Village and P.O. Kalyanpur, Pargana Kuwari, P.S. Bhorey, District- Gopalganj.

3. Brij Mohan Choudhary Son of late Hari Narayan Choudhary Resident of Village +P.O.- Kalyanpur, Pargana Kuwari, P.S. Bhorey, District Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Naresh Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

2 26-06-2018

Heard learned counsel for the petitioner.

By the impugned order, the learned Sub Judge II, Gopalganj in Title Suit No.280 of 2001 allowed the amendment petition of the plaintiff to amend and insert Plot No.1259 of Khata No.107 in Schedule I of the plaint and preliminary decree was accordingly corrected.

Learned counsel for the petitioner submits that the



plaintiff filed the suit for declaration of gift deed as illegal and devoid and also sought partition of the entire property including the property mentioned in the gift deed but due to inadvertence the plot mentioned in the gift deed could not be mentioned in Schedule I of the plaint. The suit was decreed and the gift deed was declared illegal. Thereafter, the plaintiff filed the petition for insertion of Plot No.1259 of Khata No.107 in Schedule I of the plaint and the same was allowed. Learned counsel for the petitioner submits that plaintiff preferred appeal and during the pendency of the appeal, the original court should not have allowed the amendment petition. The learned counsel for the petitioner placed his reliance on a judgment of the Calcutta High Court reported in 1999(2) ILR Cal.564(Umapad Pal v. Durgesh Nandan Ghosh). On perusal of the order as well as the judgment rendered in Umapad Pal case, I find that the facts of Umapad Pal case is absolutely different from the facts of the present case. The aforesaid case was with regard to partition of suit properties and the plaintiff of the aforesaid case sought eviction of the suit property but the suit was decreed and in appeal the judgment and decree of the trial court was also confirmed but thereafter the plaintiff filed the petition for amendment in description of the suit property. On the aforesaid facts, it was held that the same should



not have been allowed but in the present case, the plaintiff filed the petition for amendment of the plaint as well as the preliminary decree but due to inadvertence the plot could not be mentioned although the gift deed has been declared illegal. Therefore, I do not find any illegality or reason to interfere in the order impugned.

Accordingly, this civil miscellaneous petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

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