

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.178 of 2019

Satya Vijay Prasad Singh, Son of Late Ravaneshwar Prasad Singh, Resident of Village- Karma Bhagwan, P.S.- Aurangabad, District- Aurangabad

... .. Petitioner/s

Versus

1. Krishna Vijay Prasad Singh, Son of Late Rawaneshwar Prasad Singh, Resident of Village- Karma Bhagwan, P.S. and District- Aurangabad. at present Vijay Bhawan, Opposite S.D.O. Residence, East of Hotel SKY-VIEW, Old G.T. Road, District- Aurangabad (Bihar), Pin- 824101
2. Anant Vijay Prasad Singh, Son of Late Rawaneshwar Prasad Singh, Resident of Village- Karma Bhagwan, P.S. and District- Aurangabad (Bihar)
3. Ram Ran Vijay Prasad Singh, Son of Late Rawaneshwar Prasad Singh, Resident of Village- Karma Bhagwan, P.S. and District- Aurangabad (Bihar). at present- S-607 C, School Block, Sakarpur, Delhi- 110092.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 28-03-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 04.12.2018 passed in Partition Suit No.71 of 2009 by the learned Sub Judge, Aurangabad whereby he has allowed the application filed under Order 6 Rule 17 of the Code of Civil Procedure (for short 'the Code') and thereby included the land falling under Khata No.83, Plot No.404 situated at Thana No.560, Mauza and District-Aurangabad.

2. Learned counsel for the petitioner submitted that the impugned order has been passed ignoring the vital facts of the



case. The court below failed to appreciate that the plaintiff had taken a definite stand in the suit for partition in respect of land acquired by the petitioner in the name of his sons, which was self-earned property of the petitioner. It has also failed to appreciate that the plaintiff had taken a definite stand in his rejoinder to an application filed by the defendant no.2 that the land purchased by the petitioner is his self-earned property.

3. Having heard learned counsel for the petitioner and perused the record, I find that Order 6 Rule 17 of the Code provides that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

4. The suit is between the brothers for partition of land. The petitioner claims that the inclusion of the property by way of amendment belongs to property is his self-earned property and not a joint property, which needs to be partitioned. Such a plea can be taken by the petitioner in course of hearing of the suit. Merely because an amendment has been allowed, no prejudice is going to be caused to the petitioner. Though, the petitioner claims that by allowing the prayer of the plaintiff-respondent the court below has



committed a gross illegality, I find that the order impugned neither suffers from any jurisdictional error nor any material illegality.

5. In that view of the matter, I am not inclined to interfere with the order impugned in exercise of powers conferred under Article 227 of the Constitution of India.

6. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.04.2019
Transmission Date	NA

