

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18342 of 2011

- 1.1. Shiv Shankar Singh, Son of late Sita Sharan Rai, Resident of Village-Shyampur, P.S. Belsar, O.P. , Post Haujpura, District- Vaishali.
- 1.2. Anil Sharan Singh, Son of late Sita Sharan Rai, Resident of Village-Shyampur, P.S. Belsar, O.P. , Post Haujpura, District- Vaishali.
- 1.3. Abhai Sharan Singh, Son of late Sita Sharan Rai, Resident of Village-Shyampur, P.S. Belsar, O.P. , Post Haujpura, District- Vaishali.
- 1.4. Sudhir Kumar Singh, Son of late Sita Sharan Rai, Resident of Village-Shyampur, P.S. Belsar, O.P. , Post Haujpura, District- Vaishali.
- 1.5. Lalita Devi, W/o Suresh Prasad Singh, Village- Chakrasul, P.S. Vaishali.
- 1.6. Sumitra Devi, W/o Manoj Kumar Singh, Village- Pratappur, P.S. Marja, Distt. Muzaffarpur.
- 1.7. Abha Kumari, Wife of Ram Shresth Nath, Village- Panapur, P.S. Sarai, District- Vaishali.

... .. Petitioner/s

Versus

ARJUN SINGH Son of Nand Lal Singh, Resident of Village Shyampur, P.S. Belsar, O.P. Post Haujpura, District- Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shri Nandan Prasad Singh
Mrs. Navesh Nandan

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 20-09-2019

The present writ petition has been filed for setting aside the order dated 28.8.2008 passed in Title Suit No. 3 of 2005 by the learned court of Munsif-1st-Civil Court, Hajipur whereby and whereunder the petition of the plaintiff-original petitioner herein dated 20.7.2007 filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 has been rejected.

2. The learned counsel for the petitioner submits that the



learned court below has not properly appreciated the amendment sought to be made by the plaintiff-original petitioner by the aforesaid petition dated 20.7.2007 inasmuch as in the plaint, it was the case of the original petitioner that the land in question is an ancestral land and on the basis thereof, the plaintiff-original petitioner had sought for a declaration to be made regarding his possession over the suit land. It is further submitted that now, by the aforesaid amendment petition dated 20.7.2007, the only amendment being sought in the pleadings made in paragraph no. 4 of the plaint is to the effect that the ancestral land of the original petitioner in question had come into possession after one Sumo Kunwar sold the said land in favour of the relative of the plaintiff-original petitioner herein, namely, Gorakh Rai, son of Khobhari Rai whereafter the said Gorakh Rai had executed a sale deed in favour of the father of the plaintiff-original petitioner, in whose name, the suit property was mutated subsequently and thereafter, the original petitioner had come into possession of the same and mutation had also been done in his name. Thus, it is submitted that the nature of the suit is not being sought to be changed and still, the prayer of the plaintiff-original petitioner remains the same that is to the effect that possession of the plaintiff be declared over the suit



land and moreover the suit land also remains the same inasmuch as the khata and khasra number are the same.

3. Despite valid service of notice on the respondents herein, though on some dates, the learned counsel for the respondents had appeared but since couple of dates, nobody has bothered to appear in the present case, hence, it appears that the respondents do not have any objection to the writ petition being allowed.

4. Having regard to the facts and circumstances of the case, as also considering the scope of Order 6 Rule 17 of the Code of Civil Procedure, 1908 and considering the nature of amendment sought to be made in the pleadings by the plaintiff-original petitioner, this Court finds that the nature of the suit land, which was depicted as ancestral, land in the plaint still remains ancestral, even if the amendment petition dated 20.7.2007 is allowed.

5. This Court further finds that neither the prayer made by the plaintiff-original petitioner herein would change inasmuch as still the prayer in the suit remains the same i.e. “declaration of the possession of the plaintiff-original petitioner over the suit land in question.”

6. Having regard to the facts and circumstances of the case and considering the materials on record, the present writ petition



is allowed and the order dated 28.8.2008 passed in Title Suit No. 3 of 2005 by the learned court of Munsif-1st-Civil Court, Hajipur is set aside and the learned court below is directed to incorporate the amendment sought to be made in the pleadings by the petition dated 20.7.2007, filed by the plaintiff-original petitioner herein.

7. It is needless to state that the learned court below would grant ample opportunity, in accordance with the provisions of the Code of Civil Procedure, 1908, to the defendants-respondents herein to file additional written statement, if they so desire.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	5.10.2019
Transmission Date	NA

