

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1533 of 2019**

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Dashrath Das Son of Yobraj Das, Resident of village Nazari, P.S. and P.O.
Laxmipur, Sub Division and District- Jamui.

... ..Plaintiff/no.2/Appellant no.2/Petitioner
Versus

1. Kunti Devi Wife of Chando Rabidas, Resident of village - Nazari, P.O.-
Laxmipur, P.S.- Laxmipur, Sub. Division and District- Jamui.
....Defendant 1st Set/Respondent 1st Set/O.P. 1st Set
2. Babulal Das, Son of Late Kru Das, Resident of village - Anandpur, P.O. and
P.S.- Laxmipur, Sub. Division and District- Jamui.
3. Raju Das, Son of Babulal Das, Resident of village - Anandpur, P.O. and P.S.-
Laxmipur, Sub. Division and District- Jamui.
4. Lakhn Das, Son of Babulal Das, Resident of village - Anandpur, P.O. and
P.S.- Laxmipur, Sub. Division and District- Jamui.
5. Kanhai Das, Son of Babulal Das, Resident of village - Anandpur, P.O. and
P.S.- Laxmipur, Sub. Division and District- Jamui.

... Defendant 2nd Set/Respondent 2nd Set/O.P. 2 2nd Set

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Appearance :

For the Appellant/s	:	Mr.Upendra Prasad Mr.Achal Kr. Sinha Mr. Umesh Prasad
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

05-12-2019

The present petition has been filed “*for setting aside the order dated 20.05.2019 passed by the learned A.D.J.-III, Jamui in Title Appeal No. 36/2011 whereby and whereunder the amendment petition dated 15.05.2019 filed under Order 6 Rule 17 C.P.C. on behalf of the appellants-petitioners is rejected.*”

2. It is submitted that plaintiff no. 2/appellant no.2/petitioner had filed a suit for partition of the land appertaining to Khata No. 34, Khesra No. 573, area 18



decimals, situated in Village-Nazari, P.S. & Anchal Laxmipur, in the district of Jamui and the plaintiffs had claimed 1/3rd share in the suit property comprising 18 decimals of land. The defendants/respondents had filed their written statement. It is submitted that without proper scrutiny of facts and evidence, the suit was dismissed by judgment and order dated 30.07.2011 holding that the plaintiffs had no share in the suit land, rather it was the purchased land of defendant no.1 from her father. The plaintiff/appellant/petitioner accordingly filed Title Appeal No. 36 of 2011, in course of which an amendment petition was filed with a prayer for framing additional issues with respect to fraudulent registration of the sale deed dated 24.10.1972 which would not be binding on the plaintiffs, but the same has been rejected as such amendment would change the nature of the suit for partition to one for cancellation of sale deed.

3. Heard learned counsel for the petitioner and considered the materials on record.

4. A perusal of the impugned order dated 20.05.2019 shows that the learned appellate court has considered the matter in detail. It has been noted that the deed had been registered on 24.10.1972 and the same came to the knowledge of the plaintiffs on 13.06.1980, if not earlier. It has been further noted that the



plaintiffs/appellants had admitted the conveyance of title through the aforesaid sale deed and only the area conveyed remained under dispute. As such, allowing the amendment petition would amount to a challenge to the validity of the sale itself, which was not permissible. It has therefore been held that the proposed amendment would change the nature of the suit from that of a partition suit to one for cancellation of sale deed.

5. This Court does not find any infirmity in the impugned order. The petition stands dismissed.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09. 12.2019
Transmission Date	

