

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1333 of 2016**

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Dinanath Prasad son of Late Raghunath Prasad, resident of mohalla Musallahpur Hat, P.S. Kadamkuan, District Patna.

... .. Petitioner/s

Versus

1. Amarnath Prasad
2. Jagarnath Prasad. Both are sons of Late Raghunath Prasad. Both resident of Mohalla Musallahpur Hat, P.S. Kadamkuan, District Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Kumar Jain, Adv.

Mr. Sudhir Kumar

For the Respondent/s : Mr. Kamlesh Kumar Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 30-11-2022 Heard Mr. Rajendra Kumar Jain, learned counsel for the petitioner as well as Mr. Kamlesh Kumar Sharma, learned counsel for the respondents.

2. The pre-trial amendment has been rejected by the learned trial court *vide* order dated 07.06.2016 on the ground that the amendment sought by the petitioner/plaintiff of Title Suit No. 734 of 2010 is not due to typographical error. The plaintiff wants to change the genealogical table also, by way of amendment which will change the nature of the suit.

3. Learned counsel for the petitioner submits that the respondents/defendant are own brothers of the petitioner and there was family partition amongst the brothers earlier in which the property belonging to their father Late Raghunath Prasad



was partitioned. In the said partition, schedule- 4 property of the plaintiff fell into the share of the petitioner/plaintiff.

4. After the partition among the parties, the plaintiff/petitioner started constructing his house upon the land allotted in his favour and when further construction was being made, the defendants objected to the same, as such, the petitioner filed the Title Suit No. 734 of 2010 for a declaration that the property described in schedule- 4 of the plaint is the exclusive property of the petitioner and the defendants have no claim over the same.

5. He further submits that prior to filing of the Title Suit by the petitioner bearing No. 734 of 2010 a Title Suit bearing No. 468 of 2010 was filed by the defendants for declaration of their title upon the entire joint family property which was partitioned earlier. Both the suits have been amalgamated by virtue of the order passed by the learned Sub Judge- VI, Patna in 2012.

6. Learned counsel further submits that before settlement of issues in 2013, the petitioner filed an amendment petition seeking amendment in the plaint of Title Suit No. 734 of 2010 filed by him and the same has been rejected by the trial court on the ground that the amendment sought is not due to



typographical error and further the amendment will change the nature of the suit.

7. Learned counsel for the respondents/defendants submits that by way of amendment the petitioner wants to add certain new facts and he is also trying to change the genealogical table adding the name of second wife of Late Raghunath Prasad. He further submits that the land and the house were already existing in schedule-4 property.

8. According to the respondents/defendants, the suit property is not a joint property and the same was gifted by one Marni Kuer in favour of Vijay Kumar whose *alias* name is Jagarnath Prasad and he is defendant no. 2. As such, the claim of the petitioner that there was a partition amongst all the three brothers is false.

9. The registered deed of gift dated 13.12.1966 was executed by Marni Kuer which is the basis of the suit of Title Suit No. 468 of 2010 filed by the defendant no. 2/respondent.

10. I have heard learned counsel for the parties. It is an admitted position that both the parties have filed their separate suits claiming their rights on the suit property separately. It is also admitted that both the suits have been amalgamated. The petitioner has filed the amendment petition



prior to the commencement of the trial introducing certain facts, which according to the respondent is not correct. The correctness of the amendment is not to be seen at the time of considering the amendment petition and it goes without saying that the defendants will have an opportunity to rebut by filing additional written statement in the suit. Even if, it is accepted that amendment sought by the petitioner was not due to typographical error, in my opinion, it will not change the nature of the suit and also no prejudice shall be caused to the defendant. The defendant will have opportunity to rebut the claim of the petitioner/plaintiff by filing additional written statement.

11. In the result, this application is allowed and order dated 07.06.2016 is set aside. The trial court is directed to allow the petitioner to incorporate the amendment in the plaint with liberty to the respondents/defendants to rebut the claim of the petitioner/plaintiff by filing additional written statement.

(Anil Kumar Sinha, J)

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