

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.443 of 2021

1. Most. Jahari Devi W/O Late Anandi Sah, Resident of Murliganj, P.O. and P.S. - Murliganj, Ward No. 14 District- Madhepura.
2. Ram Chandra Sah S/O Late Anandi Sah, Resident of Murliganj, P.O. and P.S. - Murliganj, Ward No. 14 District- Madhepura.
3. Ranjeet Sah S/O Late Anandi Sah, Resident of Murliganj, P.O. and P.S. - Murliganj, Ward No. 14, District- Madhepura.

... .. Petitioner/s

Versus

1. Moongia Devi W/O Raghunandan Sah, D/O Late Babuji Sah, Resident of Murliganj, Ward No. 15 P.O. and P.S. - Murliganj, District- Madhepura.
2. Raghunandan Sah S/O Late Darogi Sah, Resident of Murliganj, Ward No. 15, P.O. and P.S. - Murliganj, District- Madhepura.
3. Nisha Devi W/O Suresh Sah D/O Late Rameshwar Sah, Resident of Murliganj, P.O. and P.S. - Murliganj, Ward No. 14, District- Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Parth Gaurav, Apurba Banerjee Neha Praveer and Rajiv Shankar Dvivedi, Advs.
For the Respondent/s	:	Mr. Manoj Kumar Pandey, Advocate

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

5 27-06-2022 I have already heard both the parties.

Being aggrieved by the order dated 19.02.2021 passed by the learned Subordinate Judge-III, Madhepura in Title Suit No. 170 of 2012, whereby the court below was pleased to allow the application dated 23.07.2018 filed by the plaintiffs/respondent 1st set under Order VI Rule 17 read with section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'), the present civil miscellaneous petition has been preferred.



The brief fact of this case is that Title Suit No. 170 of 2012 was filed by the plaintiffs/respondent 1st set, Moongia Devi and her husband, Raghunandan Sah against the petitioners and respondent 2nd set for a relief of preliminary decree to the extent of half share in the property of Late Babujee Sah. The plaintiffs' case in brief is that both the parties belong to the branch of common ancestor, namely, Late Rasik Sah, who died, leaving behind two sons, namely, Babujee Sah and Rameshwar Sah. Babujee Sah died in jointness with his son, namely, Anandi Sah and daughter Moongia Devi, plaintiff no. 1. The petitioners/defendant 1st set are from the branch of Anandi Sah. After death of Rasik Sah, Babujee Sah and his brother Rameshwar Sah separated themselves orally and each brother got share in the property left by their father Rasik Sah. The defendant/respondent 2nd set has only been impleaded in order to avoid complication and no relief was sought for against them by the plaintiffs. After marriage of Moongia Devi, her husband, plaintiff no. 2 started living with her as *Gharjamai* along with his father-in-law.

The petitioners-defendants filed their written statement and denied the claim of plaintiff no. 1 that she was daughter of Babujee Sah. As per the defendants-petitioners, the



plaintiffs/respondents are stranger to the family of Babujee Sah. As per recitals of written statement, Babujee Sah had two sons, namely, Gulab Chand Sah and Anandi Sah (husband of petitioner no. 1 and father of petitioner nos. 2 and 3) and two daughters, namely, Gangia Devi and Maina Devi. Gulab Chand Sah, Gangia Devi and Maina Devi died issueless. Babujee Sah died, leaving behind one son, namely, Anandi Sah and Anandi Sah inherited the entire property of Babujee Sah. Anandi Sah died, leaving behind the petitioners, who are his widow and two sons and three daughters, namely, Meera Devi, Pramila Devi and Soni Kumari.

The learned counsel for the petitioners has submitted that after filing of the written statement, in which it has specifically been stated that respondent No. 1 Moongia Devi was not the daughter of Late Babujee Sah, the petitioners filed a petition under Order VI Rule 17 of the Code with a prayer to amend the plaint mentioning that alias name of Moongia Devi is Maina Devi @ Manna Devi, except this, some other amendments were also sought for. The learned counsel has submitted further that the filing of the amendment petition amounts to withdrawal of earlier admission made in the plaint. The petitioners-defendants when averred in written statement



that Moongia Devi is not the daughter of Babujee Sah, rather one Maina Devi was daughter of Babujee Sah, the plaintiffs in order to show that Moongia Devi and Maina Devi are same lady, have filed the amendment petition. The learned trial court, as per submission, has committed illegality in allowing the amendment petition. The learned counsel for the petitioners has also submitted that there is no document, which shows that Moongia Devi and Maina Devi are same and one lady.

I have gone through the order of the learned court below. The learned court below has considered the documents produced by the plaintiffs/respondents and the genealogy certificate, in which the Moongia Devi @ Manna Devi has been shown as daughter of Babujee Sah. After considering the documentary evidences, the learned trial court was of the view that the petition for amendment was able to be allowed and he passed order accordingly.

I don't find any reason to interfere with the order of the learned trial court. It is hereby made clear that the observations made by this Court shall not effect the merit of the case. It is still fact in issue whether Moongia Devi and Manna Devi @ Maina Devi are same lady or not, which is to be decided after final hearing and after providing opportunity of being heard to



the parties.

With these observations, this civil miscellaneous
petition is being dismissed.

(Nawneet Kumar Pandey, J)

Mahesh/-

U			
---	--	--	--

