

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1107 of 2016

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Bijoy Kumar Ghosh son of Late Mukunda Murari Ghosh Resident of Village Mahiyama, Via - Ghogha, P.S. - Sanholla, District - Bhagalpur.

... .. Petitioner

Versus

1. Suresh Sah son of Late Badri Sah resident of Village Mahiyama, Via - Ghogha, P.S. - Sanholla, District - Bhagalpur.
2. Smt. Putul Devi wife of Late Umesh Sah
3. Bipin Kumar Sah Minor son of Late Umesh Sah
4. Kunal Kumar Sah Minor son of Late Umesh Sah
5. Kajal Kumari daughter of Late Umesh Sah No. 3,4 and 5 minor sons and daughter represented by their mother and natural guardian Smt. Putul Devi a All residents of Village - Rasulpur, P.O. - Mahiyama, P.S. - Sanholla, District - Bhagalpur.
6. Sapan Kumar Sinha son of Late Hirendra Mohan Sinha
8. Som Subhra Sinha son of Sri Tapan Kumar Sinha
9. Raj Kumar Ghosh @ Bappa Advocate and son of Late Tarun Kumar Ghosh alleged adopted son of Late Pramesh Chandra Ghosh resident of Mullar Tank, near Bari Pokhar, P.O. and P.S. - Godda, Dist. - Godda Jharkhand.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Amitabh Sohan, Advocate
For the Respondent/s	:	Mr. Deepak Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

16 27-06-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the constitution of India against the order dated 08.06.2016 passed by learned Munsif, Kahalgaon, Bhagalpur, in Title Suit No. 62 of 2012 whereby the amendment petition filed by the petitioner has been rejected.



3. Learned counsel for the petitioner submits that after filing written statement by the defendants, the petitioner / plaintiff came to know that Defendant No. 3 has executed a sale deed in favour of original defendant 2nd set on 10.04.2012 with respect to the property in question. Accordingly, in view of the said development the plaintiff filed a petition under Order 6 Rule 17 C.P.C. seeking amendment of plaint on 13.04.2014 challenging the sale deed dated 10.04.2012 as illegal, inappropriate, void *ab initio* and that the defendant 2nd set has not acquired any rightful title and interest in the suit land.

4. He further submits that learned trial court failed to appreciate that the need for amendment arose only on disclosure of the fact in the written statement filed by the defendant and there was no occasion for the petitioner to bring this fact earlier. The issue at the time of filing application was not settled. He further submits that the nature of suit will not change by the said amendment.

5. On the other hand, learned counsel for the respondent Nos. 1 to 4 submits that there is no illegality in impugned order and this Civil Miscellaneous Application is liable to be dismissed.



6. During the argument, learned counsel for the parties submits that this Civil Miscellaneous Application has been filed against the order dated 08.06.2016 before the commencement of trial and in the meantime the proceeding in suit reached at the advance stage of final argument accordingly, it in the interest of justice to dispose of this Civil Misc. Application with observation to frame a separate issue with respect to the validity of the sale deed dated 10.04.2012 in view of the amendment sought for. Learned counsel for the parties also submits that in view of their submissions and consent this case may be disposed of.

7. In view of the facts and circumstances of the case and with consent of the learned counsel for the parties, the impugned order is set aside and the amendment application dated 13.01.2016 is allowed and the petitioner / plaintiff is permitted to amend the plaint accordingly within four weeks of receiving / production of this order in the trial court and thereafter the defendants may file additional written statement in view of amendment in plaint within four weeks thereafter. Accordingly, learned trial court shall frame separate issue with respect to validity of the sale deed dated 10.04.2012. The trial court is directed to expedite the trial and conclude the same



preferably within four months after framing of such issue.

8. Both the parties are also directed to co-ordinate the trial court for expeditious disposal of the suit within the said time frame. The learned court below shall not give any unnecessary adjournment to any party of the suit.

(Sunil Dutta Mishra, J)

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