

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1299 of 2018

1. Jagdeo Rishideo, Son of Singeshwar Rishideo.
2. Vindi Rishideo Son of Bhup & Mola Rishideo.
3. Kali Devi, Daughter of late Ram Prasad Rishideo.
4. Draupadi Devi, Daughter of late Ram Prasad Rishideo.
5. Baldeo Rishideo, Son of late Ram Prasad Rishideo.
6. Ranjan Kumari, Daughter of late Umesh Rishideo.
All resident of Village and P.O. Beshra, P.S. Kumarkhand, District-
Madhepura.

... .. Petitioners

Versus

1. Tulsi Sharan.
2. Sanjay Kumar.
Both sons of Shri Jugrt Lal Yadav, Resident of Village and P.O.
Beshra, P.S. Kumarkhand, District- Madhepura.
3. Kripanand Kumar.
4. Ramanand Kumar.
5. Phulchand Kumar.
6. Arjun Kumar,
All sons of late Umesh Rishideo.
7. Most. Ahukhari Devi, Wife of late Umesh Rishideo.
8. Girja Kumari, Daughter of late Umesh Rishideo.
9. Bijendra Rishideo.
10. Kailu Rishideo.
Both sons of late Ram Prasad Rishideo
all Resident of Village and P.O. Beshra, P.S. Kumarkhand, District-
Madhepura.
11. Pramila Devi, Wife of late Durga Prasad Sah.
12. Binod Sah.
13. Rajesh Sah.
14. Lalo Sah
All sons of late Durga Prasad Sah.
All Resident of Village Karuvailly(Baisadh), P.S. Kumarkhand,
District-Madhepura.
15. Pramod Kumar Sah, Son of late Surya Narayan Sah, Resident of Mouza
Irain Khurd, P.S. Kumarkhand, District- Madhepura.
16. Kumar Arun Chandra Singh Bahadur, Son of late Kumar Indra Chandra
Singh Bahadur.
17. Kumar Jagdish Chandra Singh Bahadur, Son of Kumar Bimal Chandra
Singh Bahadur.



18. Kumar Amresh Chandra Singh Bahadur, Son of Kumar Bimal Chandra Singh Bahadur.
19. Kumar Brindaband Chand Singh Bahadur, Son of late Manindra Chandra Singh Bahadur.

Respondent Nos. 16 to 19 are resident of Paikpara Calcutta, Proprietor of Paikpara Deobattar Estate Calcutta.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Parth Gaurav, Advocate
For the Respondent No1 & 2: Mr.Lal Sachindra Kumar, Advocate
Mr. Ashok Kumar Sinha No.2, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 05-12-2023

In this case, the petitioner is challenging the order dated 04.06.2018 passed by learned Munsif, Madhepura, in Title Suit No.105 of 1997, by which the application dated 13.04.2018 filed by the petitioners/original defendant 1st party under Order VI, Rule-17 of the Code of Civil Procedure for amendment in the written statement has been rejected.

2. The facts of this case, as stated in the writ petition, are that the respondent nos.1 and 2 filed Title Suit No.105 of 1997 in the Court of learned Munsif, Madhepura, for declaration of their title over the suit land, confirmation of possession, recovery of possession and permanent injunction. In the plaint, it has been alleged that the properties as detailed in Schedule-B of the plaint belonged to the predecessors of the original defendant 3rd party and they settled the said land through a registered Kabuliat in favour of the ancestors of



original defendant 2nd set, who sold Scheduled-A of the plaint to the plaintiffs through a registered sale deed. In the said suit, written statement was filed by the petitioners and denied the entire averments made in the plaint on various grounds. It has also been alleged in the written statement that Lalji Sah was nearer and dearer to Kiro Sah and Hiro Sah, son of Kapuchand Sah and they had taken the suit land in settlement in the name of Lalji Sah. It is the case of the petitioners that at the stage of hearing of the suit, the plaintiff came to know that another Title Suit No. 179 of 2004 was going on in the Court of learned 1st Sub-ordinate Judge, Madhepura, between the parties litigating under the same title and there also the issue was as to whether the settlement had been taken by Hiro Sah and Kiro Sah or Lalji Sah. During the course of hearing of Title Suit No. 179 of 2004, the plaintiffs also came to know that the settlement was not taken in the name of Lalji Sah by Hiro Sah and Kiro Sah. Hiro Sah and Kiro Sah had taken loan from one Bhagli Usha, who filed a Money Suit No. 49 of 1932 against said persons for recovery of her debt. The suit was decreed and execution case was filed by decree holder. During the pendency of the execution case, the judgment debtor paid the decretal amount by Hiro Sah and Kiro Sah and accordingly, the execution case



was dismissed after full satisfaction. According to the petitioners, all these facts were came as surprise and therefore, the petitioner/original defendants made further inquiries and upon realizing that under a wrong impression they made certain statement in the written statement, they filed an amendment petition in the written statement, which was dismissed by the impugned judgment.

3. Learned counsel for the petitioners submits that the petitioners did not withdraw the admission made in the written statement rather by the proposed amendment they made clarification with regard to the statement made in the written statement and the amendment in the written statement should not be viewed at par with the amendment in the plaint.

4. Learned counsel for the plaintiffs-respondents has opposed the amendment sought for by the defendant 1st party only on the ground that the admissions cannot be allowed to be withdrawn by any party by way of amendment.

5. Considered the submissions of the parties and perused the materials on record.

6. The petitioners wanted to delete the sentence “Kiro Sah and Hiro Sah took settlement of the land in the name



of Lalji Sah as Benamidar” and also add some facts that “Hiro Sah and Kiro Sah had taken loan from Smt. Bhagli Usha. Bhagli Usha filed money suit for recovery of her debt. The suit was decreed and Execution Case was filed by the decree holder. During the pendency of Execution Case No. 217 of 1934, the judgment debtor paid the decretal amount by Hiro Sah and Kiro Sah and consequently, Money Execution Case No. 217 of 1934 was dismissed after full satisfaction” as well as other sentences which clarified these statements.

7. I find substance in the submission of the petitioners that by the proposed amendment the defendants were seeking clarification with regard to the statements made in the written statement and the same cannot be treated at par with the amendment in the plaint, inasmuch as the defendant can take additional defence at any time or at any stage of the suit. Further, the suit is at the stage of plaintiffs evidence. In my opinion, the proposed amendment is not for withdrawing any admission but is for clarifying the statements made in the written statement and as such, the amendment should have been allowed.

8. In view of the aforesaid facts and also considering the law laid down by the Hon’ble Supreme Court in



the case of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited* reported in *AIR 2022 SC 4256*, this application is allowed. Accordingly, order dated 04.06.2018 passed by learned Munsif, Madhepura, in Title Suit No.105 of 1997 is hereby set aside. The amendment petition dated 13.04.2018 filed by the petitioners / original defendant 1st party is allowed. The Court below is directed to proceed further in the suit.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	05.12.2023
Transmission Date	

