

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.178 of 2020

Madan Dwivedy S/o Late Gaya Dwivedy Resident of Village- Sheorajpur,
Police Station- Nautan, District- West Champaran.

... .. Petitioner/s

Versus

1. Lal Bahadur Yadav Son of Late Gunraj Yadav Resident of Village-
Machhargawa Police Station- Bairia Dist- West Champaran.
2. Narayan Yadav Son of Late Bhikhari Yadav Resident of Village- Sheorajpur
Police Station Nautan, District- West Champaran.
3. Laxman Yadav Son of Late Bhikhari Yadav Resident of Village- Sheorajpur
Police Station Nautan, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shiv Kumar Dwivedy, Advocate
For the Respondent/s	:	Mr. Nafisuzzoha, Advocate
		Mr.Bal Govind Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 20-03-2025

Heard learned counsel for the parties.

2. The petitioner is aggrieved by the order dated 04.05.2019 passed by learned Munsif, Bettiah, West Champaran in Title Suit No. 104 of 2012, whereby and whereunder the learned trial court allowed the application filed by respondent no. 1 under Order VI Rule 17 of the Code of Civil Procedure.

3. Learned counsel for the petitioner submits that respondent no. 1 is plaintiff of Title Suit No. 104 of 2012 before the learned trial court and he has filed the suit for declaration on



the suit property. The basis of the claim of the plaintiff is that suit property is his purchased land but by the amendment sought by the plaintiff, the plaintiff claims to be one of the co-sharers. Earlier plaintiff claimed that one Jhengat Ahir had two sons Bhuneshwar Ahir and Jitu Ahir. Jitu Ahir died leaving behind one son Bhagarasan Yadav who died issueless whereas Bhuneshwar Ahir had a son Bhikhari Yadav who died leaving behind two sons namely, Narayan Yadav and Laxman Yadav and one daughter Radhika Devi. Now, the plaintiff has been introducing a new fact that Jitu Ahir had not only a son Bhagarasan Yadav but also a daughter Sarali Devi, who was the mother of the plaintiff. It is not believable that the plaintiff was not knowing that his mother was daughter of Jitu Ahir and Bhagarasan Yadav was his maternal uncle. Further, the plaintiff earlier claimed that Jitu Ahir and Bhagarasan Yadav sold out their entire property but now he is claiming that this property was sold to the father of the plaintiff, though the suit was filed with claim that property of the plaintiff was purchased from one of the sons of Bhikhari Yadav namely, Narayan Yadav. So entirely a new case and unbelievable facts have been brought at the stage of evidence. But the learned trial court has not considered the nature of amendment and also the stage at which



it was introduced and by a cryptic order allowed the amendment. Learned counsel further submits that the order on the amendment petition was passed on 04.05.2019 but from the running order sheet of the court it would transpires that after 24.04.2019 the next date fixed in the case was 21.05.2019 and the order sheet mentioned this fact that rejoinder on behalf of defendant was filed on record on that date. But it is not clear how the impugned order came to be passed. Learned counsel further submits that the impugned order is not sustainable and the same may be set aside.

4. Learned counsel appearing on behalf of respondent no. 1 submits that there is no infirmity in the impugned order. Learned counsel submits that by the proposed amendment there would not be any change in the nature of the suit and the learned trial court has rightly passed the impugned order. Learned counsel further submits that the amendment was necessitated as the plaintiff/respondent no. 1 was not having knowledge about relationship as well as earlier purchase of the land by his father.

5. I have given my thoughtful consideration the rival submission of the parties and also perused the record. At the outset it needs to be mentioned that the amendment was sought to be introduced after commencement of trial and no



explanation has been furnished for bringing the amendment after commencement of trial. Moreover, the only explanation which has been mentioned in the amendment petition is that the plaintiff was not having knowledge. Now, it is not believable that the plaintiff was not aware about his mother, her brother and her father and their genealogy which was the basis of his claim. So this explanation appears to be completely bogus.

6. Further, the amendment petition introduced a completely new fact and changes the basis of claim of the plaintiff. This could not be allowed. Further, the learned trial court did not consider all these facts and passed the order which is completely erroneous and beyond the jurisdiction of the learned trial court.

7. In the light of aforesaid discussion, I am of the considered view that the impugned order is not sustainable and the same is set aside. Accordingly, the present petition stands allowed. `

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2025
Transmission Date	NA

