

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.777 of 2023

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Nagendra Pandey S/o Late Rambasawan Pandey R/o Village-Shitalpur
Chakiya, P.O.-Sitalpur, P.S.-Dighwara, Distirct-Saran, Bihar, 841221.

... .. Petitioner/s

Versus

1. Abhimanyu Kumar Pandey S/o Late Nawal Kishore Pandey R/o Village-Shitalpur Chakiya, P.O.-Sitalpur, P.S.-Dighwara, District-Saran, Bihar, 841221
2. Abhishek Kumar Pandey S/o Late Nawal Kishore Pandey R/o Village-Shitalpur Chakiya, P.O.-Sitalpur, P.S.-Dighwara, District-Saran, Bihar, 841221

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rupesh Kumar, Advocate Mr. Nishant Sinha, Advocate
For the Respondent/s	:	Md. Nadim Seraj, Advocate Mr. Shahbaj Alam, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 07-04-2025

Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. The petitioner is aggrieved by the order dated 27.06.2023 passed by learned Sub Judge-I, Sonpur, Saran at Chapra in Partition Suit No. 381 of 2000 whereby and whereunder the learned Sub Judge allowed the petition dated 04.08.2022 filed by the plaintiff through which a prayer was made by the plaintiff to pass order on application dated 24.03.2003 and rejoinder dated 09.04.2003.

3. Learned counsel for the petitioner submits that the petitioner is defendant no.6 before the learned trial court and the



respondents are plaintiffs of Partition Suit No. 381 of 2000. In the said partition suit, defendant no.1 Mostt. Dulari Devi filed two written statements, first written statement on 02.08.2002 and the second written statement on 02.09.2002. Learned counsel further submits that the impugned order is not legal and has been passed in mechanical manner and the same is fit to be quashed. The learned trial court did not consider that original defendant no.1 Mostt. Dulari Kuwar and his younger son, namely, Shailesh Kumar Pandey, who are defendant no.3, were living together and after institution of the partition suit, they filed their joint written statement on 02.08.2002. Thereafter, under the influence of the original plaintiff, defendant no.1 filed a different written statement. On 24.03.2003, another application was filed by defendant no.1 in collusion with plaintiff for rejecting her first written statement. This petitioner filed a rejoinder on 09.04.2003. The law does not provide for filing of second written statement and hence second written statement should have been rejected by the learned trial court. The defendant no.1 did not seek any leave or permission from the court for filing the second written statement. The parties have led their evidence on the basis of first written statement of the defendant no.1 and the petitioner would be greatly prejudiced if



second written statement is allowed to be taken on record discarding the first written statement. Learned counsel further submits that moreover this orders have been passed after 20 years of the filing of the application and written statement and allowing the second written statement without deciding the application dated 24.03.2003, is bad in the eye of law. Learned counsel referred to Order 8 Rule 9 of the Code of Civil Procedure (for short 'the Code') which deals with subsequent pleadings. Learned counsel submits that no pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter claim shall be presented except with the leave of the court. In the present case, the defendant no.1 had not taken any leave of the court. Learned counsel further submits that application under Order 8 Rule 9 of the Code cannot be treated as one under Order 6 Rule 17 of the Code as both are contextually different as held in the case of *State of Rajasthan vs. Ikbal* reported in *AIR 1999 Raj 169*. Learned counsel also refers to the case of *Douglas vs. Collector of Banaras* reported in *(1851) 5 MIA 271*, wherein it has been held that the additional written statement should not set up a totally new case or state facts as direct variance with the original written statement so as to completely change the issue in the



case. In the present case, the defendant no.1, in collusion with plaintiff, has made up an entirely different or new case. Learned counsel further submits that even if any leave is granted for additional written statement, the same does not mean leave to treat the subject matter afresh or to ignore the earlier written statement and refers to the case of ***TB. Dayashanker vs. Kaluram*** reported in ***AIR 1978 Guj 94*** and ***Kedar Lal vs. Ram Prakash*** reported in ***(1999) CLT 1 (FB)***. Thus, the learned counsel submits that the impugned order is not sustainable and the same be set aside.

4. Learned counsel appearing on behalf of the respondents opposes the submission made on behalf of the petitioner. Learned counsel for the respondents submits that there is no infirmity in the impugned order and this fact becomes clear from perusal of the statement of defendant no.1 recorded under Order 18 Rule 16 of the Code. In her statement, the defendant no.1 has categorically stated that she did not put any thumb impression on the document of written statement and has stated that she and her son have not filed any written statement. Learned counsel further submits that if no written statement was filed by defendant no.1, there is no question of filing any second written statement as it is her only written statement on the



record. The same thing was clarified by the learned trial court vide the impugned order. Learned counsel further submits that the learned trial court has passed the impugned order taking into account all the relevant facts and provision of law and the impugned order does not require any interference by this Court. For the aforesaid reasons, the authorities cited by the learned counsel for the petitioner are not applicable in the facts and circumstances of the case.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. No doubt the Code of Civil Procedure does not provide for filing of two written statements though subsequent pleadings by way of additional written statement could be taken on record with the leave of the court. However, in the present case, the chronology is quite important. Just one month after filing of the first written statement, second written statement was filed. First written statement is said to have filed on 02.08.2002 and one month thereafter the second written statement came on record with claim of the defendant no.1 that the first written statement was not her written statement. Further development has also taken place and an application has been moved on behalf of the plaintiff for examination of defendant no.1 as special witness



under Order 18 Rule 16 of the Code and the said application was allowed and the defendant no.1 was examined as a witness in the case and the same was not challenged as submitted by the learned counsel for the petitioner on instruction. If the said order was not challenged, the deposition made therein becomes relevant. In her deposition, the defendant no.1 has stated that she or her son did not file any written statement. Obviously she is talking about the written statement which has been filed on 02.08.2002. At the same time, in the same deposition she has stated that defendant no.6 has taken his signature on a number of papers for getting her old age pension. If the first written statement is disowned by the defendant no.1, effectively there is no written statement of defendant no.1 on record and filing of the subsequent written statement could not be said to be a second written statement of defendant no.1. Therefore, the learned trial court proceeded in the right direction and there is no error of jurisdiction. Hence, the impugned order dated 27.06.2023 passed by learned Sub Judge-I, Sonpur, Saran at Chapra in Partition Suit No. 381 of 2000 is affirmed.

6. Accordingly, the present petition stands dismissed.

7. Since it is quite an old matter of the year 2000, the learned trial court is directed to expedite the proceeding since



the matter has been coming up for final argument as it appears from the impugned order and disposed it of at the earliest and preferably within three months from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2025
Transmission Date	NA

