

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23542 of 2012

Bimal Kumar Dutta S/o late Bireshwar Dutta Resident of Village Dalsingsarai, P.O. and P.S. Dalsingsarai, District- Samastipur.

... .. Petitioner/s

Versus

- 1.1. Dilip Kumar Chowdhary, son of late Jay Kant Chowdhary@ Mahatura Chaudhary Resident of Village- Jaisatty, P.O. and P.S. Dalsing Sarai, District- Samastipur.
- 1.2. Krishna Kumar Chowdhary, Son of late Jay Kant Chowdhary Resident of Village- Jaisatty, P.O. and P.S. Dalsing Sarai, District- Samastipur.
- 1.3. Manoj Kumar Chowdhary, Son of late Jay Kant Chowdhary Resident of Village- Jaisatty, P.O. and P.S. Dalsing Sarai, District- Samastipur.
- 2.1. Smt. Shai Devi, Wife of late Sita Ram Choudhary, Resident of Village Jaisatty,P.O. and P.S Dalsingsarai, District- Samastipur.
- 2.2. Basant Choudhary, Son of late Sita Ram Choudhary, Resident of Village Jaisatty,P.O. and P.S Dalsingsarai, District- Samastipur.
3. Jagdish Choudhary S/o late Mahabir Choudhary
- 4.1. Most. Ram Maya Devi, Wife of late Bhushan Choudhary, Resident of Village Jaisetty,P.O. and P.S Dalsingsarai, District- Samastipur.
- 4.2. Neetu Kumar Son of late Bhushan Choudhary Resident of Village Jaisetty,P.O. and P.S Dalsingsarai, District- Samastipur.
- 4.3. Seema Kumari, D/o of late Bhushan Choudhary Resident of Village Jaisetty,P.O. and P.S Dalsingsarai, District- Samastipur.
- 4.4. Jyoti Kumari, D/o of late Bhushan Choudhary, Resident of Village Jaisetty,P.O. and P.S Dalsingsarai, District- Samastipur.
5. Nageshwar Devi W/o late Haribansh Narain Rai
6. Abhay Kumar Rai
7. Madanjit Kumar Both Sons of late Haribash Narain Rai All Resident of Village Loknathpur, P.O. and P.S. Dalsingsarai, District- Samastipur.
8. The State of Bihar through the Collector, Samastipur.
9. The Collector, Samastipur.
10. Birendra Dutt S/o late Bireshwar Dutt Resident of Village Dalsingsarai, P.O. and P.S. Dalsingsarai, District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ratan Kumar Sinha
Mr. Sanjay Kr. Sinha
Ms. Rama Prabha,
For the Respondent/s : Mr. Chaudhary Shyam Nandan.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 20-03-2024

Heard the parties.

2. This application has been on behalf of the



petitioner for quashing the order dated 12.09.2012 passed by the learned Sub-Judge, II, Dalsinghsarai in Title Suit No. 93 of 2003 by which the Sub-Judge has allowed the amendment petition filed by the defendant under Order 6 Rule 17 read with Order 8 Rule 6(A) and Section 151 of the Code of Civil Procedure.

3. The Title Suit No. 93 of 2003 was filed by the plaintiff for correction of the mistake in the revisional survey. The defendants have appeared and filed their written statement and denied the claim of the plaintiff.

4. The plaintiff, on 17.07.2009 filed an amendment petition under Order 6 Rule 17 of the CPC for amendment of the plaint and it was submitted that due to typing error, some details have been left out to be typed in the plaint and the Court below by the impugned order has allowed the amendment.

5. Thereafter, the defendant No. 2 filed an application for amendment in his written statement and he made a counter claim and to this claim, the defendant no. 2 wants the sale deed dated 17.11.1952 to be declared forged, fabricated and illegal and not binding upon the defendant and also prayed for eviction of the plaintiff from the Suit land and for recovery of possession.

6. The plaintiff filed a rejoinder and denied the



claim of the defendant and it was contended by the plaintiff that if the proposed amendment is allowed then the nature of the suit will be changed and the defendant will have no right to raise his counter claim. The plaintiff also pointed-out that except for defendant no. 2, no other defendant has raised any counter claim.

7. The Court below has allowed the application filed by the defendant no. 2 and thus, allowed the amendment as prayed for.

8. Learned counsel for the petitioner submits that the amendments as prayed for by the defendant no. 2 should not have been allowed as the same changes the nature of the suit and the admissions made by the defendant no. 2 in his written statement are being withdrawn by the amendments.

9. Learned counsel for defendant no. 2 has supported the impugned order and has submitted that the amendments do not change the nature of the suit and the admissions are not being withdrawn but are being explained by the defendant no. 2.

10. The defendant no. 2 has proposed the amendments in Paragraph No. 8, 10, 14, 15, 16, 19, 20, 22, 28, 30, 33, 36, 37, 38 of the written statements.



11. From the reading of the amendments proposed by the defendant no. 2, it appears that the admissions are being withdrawn by the defendant no. 2 and he is now making out a new case which in view of 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* is not permissible.

12. The amendments are not explanatory but the defendant no. 2 is making out a new case for withdrawing its earlier admissions which is not permissible in law.

13. In view of the above discussions, this application is allowed and the order dated 12.09.2012 passed by the learned Sub-Judge, II, Dalsinghsarai in Title Suit No. 93 of 2003 is hereby quashed.

14. The interim order or stay of the suit is hereby vacated. The suit will proceed further.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.03.2024
Transmission Date	NA

