

Se. 31
18/6/14

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J:C.No. _____ 2014

Sri Brahmanand Jayaswal, & Another ... **Petitioners**

Versus

Chandrabhusan Choudhary & Others

... **Respondents**

Others

Subject: CIVIL MISCELLANEOUS MATTER

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No. 2014

Shri Brahmanand Jayaswal & Another ... **Petitioners**

Versus

Chandrabhushan Choudhary & Others ... **Respondents****Synopsis of the Case**

1 In 2005 The plaintiffs-petitioners filed the suit in the Court of Sub-Judge, Madhepura being T.S.No.24 of 05 for declaration

(a) That the details of property given in schedule 'K' has been owned and possessed by the ancestor of the Plaintiff No.1 late Lakshmi Choudhary which has been mutated in the name of Sri Sri 108 Ramchandra Ji Mahraj, Jairampur and which has been donated and has been left for use.

(b) That the property mentioned in schedule 'Kh' belongs to Shri 108 Ramchandra Ji Maharaj Jairampur Murliganj.

(c) Further, for declaration of permanent injunction over the suit land till final hearing of the case and for restraining the defendants from changing the nature and structure of the suit land.

(d) And also for other reliefs mentioned in the plaint of the suit.

2. 14.03.2005 The aforesaid T.S.No.24 of 2005 was allowed by learned Court below.
3. 21.12.2005 Defendant No.1 and Defendant No.4 filed their written statement in the court below.
4. 17.04.2014 Plaintiffs-petitioners filed Amendment

petition under Order 6 Rule 17 of the
Code of Civil Procedure

- 5 22.04.2014 Defendants-Opposite Party 1 to 4 filed
their rejoinder to the petition filed on
behalf of the petitioner.
- 6 19.05.2014 Learned Sub-Judge rejected the prayer of
amendment of the petitioners

Hence, the present writ petition is being filed before
this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No. _____ 2014

In the matter of an
application under Article
227 of the Constitution of
India

And

In the matter of:

1. Sri Brahmanand Jayaswal, son of late Ramkhelawan Jayaswal, resident of village-Jairampur, Murliganj, Notified Ward No.5, Police Station Murliganj, District-Madhepura.
2. Sri Sri 108 Ramchandra Maharajji Sewayat, Sri Brahmanand Jayaswal, son of late Ramkhelawan Jayaswal, resident of village-Jairampur, Murliganj, Notified Ward No.5, Police Station Murliganj, District-Madhepura.

Plaintiffs...Petitioners

Versus

1. Chandrabhushan Choudhary,
2. Indrabhushan Choudhary,
3. Krishnabhushan Choudhary,
4. Om Prakash Choudhary.

All resident of village- Madhepura, Ward No.15,
P.S. Madhepura, District- Madhepura.

5. The State of Bihar, through the Collector.
Madhepura. **Defendants...Respondents**

To

The Hon'ble Justice Ms. Rekha M. Doshit, the Chief
Justice of the High Court of Judicature at Patna and
her companion Justices of the said Hon'ble Court.

The humble petition on
behalf of the petitioner
abovenamed:

MOST RESPECTFULLY SHEWETH:

1. That this petition is being filed on behalf of the
petitioners for issuance of an appropriate writ, order
or direction as well as for quashing of order dated

19.05.2014 passed by the Civil Judge, Senior Division-I, Madhepura in Title Suit No.24/2005 whereby the petition filed on behalf of the plaintiff-petitioners under Order VI, Rule 17 of the Code of Civil Procedure for amendment of the plaint has been rejected.

2. That the petitioner No.1 is citizen of India and residing within the territorial jurisdiction of this Hon'ble Court. Petitioner No.2 is Deity of which Petitioner No.1 is sewayat.
3. That the plaintiff-petitioners filed Title Suit No.24/2005 in the Court of Civil Judge, Senior Division No. 1, Madhepura for the following reliefs:-
 - (a) On the facts and circumstances mentioned in complaint, court may declare that the details of property given in schedule 'K' has been owned and possessed by the ancestor of the plaintiff No.1 namely late Lakshmi Choudhary which has been mutated in the name of Sri Sri 108

Ramchandra Ji Mahraj, Jairampur and which has been donated and has been left for use.

- (b) For declaration that the property mentioned in schedule ~~K~~^{KH} belongs to Shri 108 Ramchandra Ji Maharaj Jairampur Murliganj.
 - (c) Further, for declaration of permanent injunction over the suit land till final hearing of the case and for restraining the defendants from changing the nature and structure of the suit land.
 - (d) And also for other reliefs mentioned in the plaint of the suit.
4. That the Defendants-Respondents have already appeared and filed their written statement and contesting the suit.
 5. That the plaintiff-petitioners filed a petition under Order VI Rule 17 of the Code of Civil Procedure with a prayer to allow the plaintiff to amend the plaint to the extent sought for as below:-

6. That in Para 5 of the plaint, date of judgment has been mentioned as '11.05.1928' in place of '10.05.1928' and hence, the plaintiff prayed that in place of '11.05.1928' plaintiff may be allowed to change the date as '10.05.1928' i.e. '10' in place of '11' which is completely formal in nature.

Apart from that the plaintiff-petitioners' further prayer was made that in Para 15 of the plaint in 3rd line word 'south' (दक्षिण) it should be east(पूर्व).

Xerox copy of the petition filed under Order VI Rule 17 C.P.C. for amendment of the plaint is annexed as **Annxure-1** to this writ petition.

7. That the defendant filed rejoinder on their behalf to the petition filed on behalf of plaintiff petitioners under Order VI, Rule 17 of the Code of Civil

Procedure and opposed the amendment sought for by the plaintiff-petitioners.

Xerox copy of the rejoinder filed on behalf of Defendant is annexed as **Annexure-2** to this petition.

8. That the learned court below, after hearing the parties, has been pleased to reject the prayer of the plaintiff petitioners vide his order dated 19.05.2006.

Certified copy of order dated 19.05.²⁰¹⁴~~2006~~ is annexed as **Annexure-3** to this petition.

9. That from perusal of the statement made in the petition filed under Order VI Rule 17 of the Code of Civil Procedure it will appear that the amendment sought for by the plaintiff petitioners are completely formal in nature as the date of judgment has been wrongly typed as '11.05.1923' in place of

'10.05.1923' as it is matter of record, the certified copy of the said order is already on the record of the case itself from perusal of which it will appear that the date of judgment is '10.05.1928' but due to typographical mistake it has been written as **11-05-1928** so prayer of plaintiff-petitioners is quite clear and genuine and it was formal in nature as by replacing the date '10' in place of '11' will make no change of nature of the suit.

10. That the date of judgment which is on the record as '10.05.1928' but due to typographical mistake it has been wrongly mentioned as '11.05.¹⁹²⁸~~2018~~' sought amendment for all the plaintiff petitioners completely formal in nature and by the amendment no nature of the suit is going to change at all, hence it was essential in the interest of justice for the learned court below.
11. That the plaintiff-petitioners have also prayed for to allow the plaintiff-petitioners to replace the word

'south' as it has been wrongly typed as "south' (दक्षिणी) in place of 'east" mentioned in Para 15 of the plaint. Hence, learned court below has wrongly and illegally rejected the prayer of the petitioner for amendment of the word east in place of 'south' as it is also matter of record by amendment of which the nature of suit is not going to be changed at all and there will be no any adverse impact over the nature of the suit if the word 'south' is replaced by the work 'East' because it shows the physical boundary of the plot in question.

12. That the amendment of the plaint which was completely formal in nature and it was essential for providing accurate date of judgment and also for giving accurate boundaries of the plot in question.
13. That in the facts and circumstances of the case as it has been stated above it is very much clear that by the amendment sought for by the plaintiff-petitioner's, if allowed neither nature of the suit is

going to be changed nor it will cause any harm to the defendants-respondents.

14. That in the facts and circumstances of the case it is essential in the interest of justice that the prayer of amendment should have been allowed by the court below.
15. That the order dated 19.05.2014 has been passed without applying his judicial mind and the same is wrongly and illegally rejected by the learned court below.
16. That the petitioners have no other efficacious or speedy remedy than to move this Hon'ble court in its writ jurisdiction, hence the present writ petition is filed in this Hon'ble Court..
17. That the petitioners have not moved this Hon'ble court on any earlier occasion for the relief sought for in the present writ application.

It is, therefore humbly prayed
that this Hon'ble Court may

graciously be pleased to admit this writ application, issue an appropriate writ against the respondents to show cause as to why the amendment sought for by the plaintiff-petitioners may not be allowed and on showing cause, if any this Hon'ble court may be pleased to make the Rule absolute against the respondents and in favour of the petitioners' and after hearing the parties this Hon'ble court may be pleased to set aside the order dated 19.05.2014 passed in Title Suit No.24/2005 and further be pleased to direct the learned court below to allow the petitioners to amend the plaint

as it has been stated above and the date may be allowed to be corrected as '10.05.1928' in place of '11.05.1928' and further the plaintiff may be allowed to correct the word 'south' as 'east' in Para 15 of the plaint

And/or

Be pleased to pass such other order or orders as may be deemed fit and proper.

And for this, the petitioners shall ever pray.

AFFIDAVIT

I, Sri Brahmanand Jayaswal, aged about 75 years, son of late Ramkhelawan Jayaswal, resident of village- Jairampur, Murliganj, Notified Ward No.5, Police Station Murliganj, District- Madhepura do hereby solemnly affirm and state as follows:-

1. That I am petitioner no.1 and deity of petitioner No.2 in the present application; as such I am well acquainted with the facts and circumstances of this case.
2. That the contents of this petition have been read and understood by me. The statements made therein are true to my knowledge based on the records of this case as well as on my personal knowledge which I believe to be true and correct.
3. That the annexure annexed to this petition is true copy of its original.

ANNEXURE-1

न्यायालय में,

श्रीमान असैनिक न्यायाधीश वरिय कोठी,
मधेपुरा।

दिवानी वाद सं०- 24/05

ब्रह्मानंद जयसवाल एवं अन्य

... वादीगण

बनाम

चन्द्रभूषण चौधरी एवं अन्य

... प्रतिवादीगण

उपरोक्त वादीगण की ओर से व्यवहार प्रक्रिया
संहिता के आदेश 6 नियम 17 के अंतर्गत आवेदन
प्रविष्ट कर निम्नलिखित नम्र निवेदन करते हैं:-

1. कि उपरोक्त वाद में टंकण भूल के कारण कुछ शब्द गलत टंकित हो गया है जिसका सुधार होना न्यायहित में अति आवश्यक है।
2. कि उक्त सुधार से वाद के प्राकृतिक बनावट या वाद मूल या प्रतिकार में कोई परिवर्तन नहीं होता है।

अतः प्रार्थना है कि वाद पत्र के पेज नं० - 5 के प्रथम पंक्ति में अंक 11 को कलमजद कर स्थान पर 10 तथा वाद पत्र के कडिका 15 के तीसरे पंक्ति में दर्ज दक्षणी को कलमबंद कर उस स्थान पर पुरवी दर्ज कर वाद पत्र का सुधार होने का आदेश देने की कृपा की जाय।

हस्ताक्षर वादी

ह०/ ब्रह्मानंद जयसवाल

सत्यापन

मैं वादी ब्रह्मानंद जयसवाल आज दि० 3.5.2014 ई० को व्यवहार न्या० मधेपुरा परिसर में सत्यापित करता हूँ कि इस सुधार आवेदन में वर्णित सारे कथन सत्य हैं।

ब्रह्मानंद जयसवाल
सत्यापक

अधिवक्ता।

Chandrajkant

Adv

3-5-2014

ANNEXURE-2

In

The Court of Civil Judge,
Senior Division, Madhepura.

Title Suit No. 24/2005

Brahmanand Jaiswal and others ... Plaintiff

Versus

Chandra Bhushan Choudhary and others.. Defendants

The humble rejoinder petition on
behalf of defendant against the
petition filed on behalf of
Plaintiff u/s VI Rule -17 of the
C.P.C. most respectfully

Sheweth:-

1. That, Plaintiff have not got any locus standie to file the petition dated 17.04.2014.
2. That, Plaintiff filed the petition for only make delay for disposal of the suit and harass to these defendants.

3. That, defendants beg to submit that the present suit fixed for final argument and argument going on behalf of defendant, therefore, as per provision of order VI Rule 17 of the C.P.C. that amendment petition is not maintainable under the provision of law and same is fit to be rejected.

4. That, if the proposed amendment will be allow the defendants shall be highly prejudice and nature of the present suit will be totally changed and only this ground the amendment petition filed on behalf of Plaintiff be rejected.

under the facts and circumstances your honour may be pleased enough to reject the amendment petition with cost and for this defendant shall ever pray.

Defendant,
through
Advocate.

5188
29.05.14

02.06.14
02.06.14
03.06.14
T. 5 24/15
Annexure-3
16

19.5.14 उम्मेदवार की कोठी से पेश की है। (कार्यालय)

आज करीब 12:30 बजे

आदेश

करीब पत्र की कोठी से दि. 17.5.14 को करीब-6
निष्पत्ति के अंतर्गत आपका पत्र है। लक्ष्मीन सेवानुसार
अनुदान का बिल-किया गया। करीब की कोठी से दि.
3.5.14 को पत्रा 6 निष्पत्ति-17 के अंतर्गत द्वारा
हस्ताक्षर अनुदान रिपोर्ट में उक्त लेख संशोधन
अनुदान की प्रति प्रतिलिपि पत्र को ही जमा/प्रतिलिपि
पत्र की कोठी से दि. 22.5.14 को जमा का बिल-किया
गया। उम्मेदवार को पूर्व ही सूचना जा चुकी है।
करीब पत्र का अर्थ सेवानुसार अनुदान दि. 17.5.14
करना है कि उक्त को अर्थ के कारण-व्य
में अर्थ सब व उक्त जमा देखि ही जमा नया
कुछ अर्थ है। अर्थ सुधार से न्यायिक
अनुदान है। करीब पत्र को लक्ष्मीन सेवानुसार
अनुदान सेवानुसार उक्त को ही अर्थ अर्थ
के अर्थ या अर्थ में कोई प्रतिलिपि नही
है। अर्थ: जमा है कि अर्थ अर्थ अर्थ
लेखा नं. 261 के अर्थ के व अर्थ के अर्थ
दीपक व उकारा के अर्थ के अर्थ अर्थ अर्थ
अर्थ अर्थ अर्थ अर्थ अर्थ अर्थ अर्थ अर्थ
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उम्मेदवार को दि. 22.5.14 को
कार्यालय जमा से करा गया कि करीब-6
अनुदान कार्यालय अर्थ को ही अर्थ है। उक्त
सेवानुसार अनुदान अर्थ करीब को अर्थ अर्थ
अर्थ को अर्थ अर्थ अर्थ अर्थ अर्थ अर्थ अर्थ
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GOVT OF BIHAR
REGISTRATION, EXCISE & PROHIBITION DEPT.
MADHEPURA SCORE (MADHEPURA)
COURT FEE
Authorization No. 2037
भारत
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BIHAR
JUDICIAL
6627 8220306

Di. 9.6.14
AS - B

मोतापि
19.5.14

गोले आकार वाली होने के कारण उसे
गोलापनी के रूप में जाना जाता है।

गोलापनी का जोर से पकड़ना
सिरोपन आकर 12.09.14 के मसौदा किता
उपरोक्त में उक्त कहा है कि टंकरी
शुद्ध के कारण हुए शब्द गलत हैं किता
है जिसका सुधार होता आवश्यक है। उक्त
सिरोपन के जोर से स्वल्प में कोई परिवर्तन
नहीं होता। अतः उपरोक्त किताद-40 के
पेज नं. 5 में उपरोक्त में टंक-11 को
कलम नं. 42 उक्त किता प. 10 टंक नं. 42
के किता 15 के नीचे टंक नं. 42 को
को कलम नं. 42 उक्त किता प. 10 टंक नं. 42
सुधार दिया जाय।



उपरोक्त पत्र कोर से उक्त
सिरोपन आवेदन का मौखिक विवरण देकर
कहा जाता कि नतीजा ही जोर से आकार
सिरोपन आवेदन देना जोर की आवश्यकता
आवश्यक रूप से विधिकी कार्य का प्रमाण
दिया जा रहा है। जोर से जोर से उपरोक्त
सिरोपन में कोई विधिकी कार्य नहीं है किता
काम ही में प्रमाण है।

उपरोक्त में नतीजा का प्रमाण तथा
सिरोपन का आवेदन किता। सिरोपन के
आवेदन में विधिकी कार्य है कि नतीजा
जोर से किता प. 10 टंक नं. 42 को
आवेदन किता प. 10 टंक नं. 42 को
उक्त सिरोपन आवेदन में इस जोर को उपरोक्त
नतीजा किता प. 10 टंक नं. 42 को
आवेदन में उक्त नतीजा का प्रमाण किता
परिचितियों में नतीजा किता प. 10 टंक नं. 42 को
उक्त नतीजा प. 10 टंक नं. 42 को
आवेदन में विधिकी कार्य है कि उक्त नतीजा
उक्त नतीजा देना किता प. 10 टंक नं. 42 को

19

P.C.14

T-24/05

0mm/14
19.5.14

काली द्वारा काल-कार संशोधन छात्रों को
देकर काल की कार्यकारी को एक निष्ठापण
को बनाकर एक रूप से विभाजित करने का
प्रस्ताव दिया जाया है। रानी स्थिति में
करीब 100 की संख्या में शामिल अन्त संशोधन
छात्रों में कोई विशिष्ट नम संतर्क संशोधन
होस कारण नहीं होने के कारण करीब
100 की संख्या में संशोधन छात्रों को
उत्पाद को प्राप्त से करिब विभाजित



निष्ठापण
के
कारण

काद सं
19.5.14

कार्यकारी की ओर से सभी के साथ
कार्यकारी एवं प्रकृति को विभाजित करने हेतु
एक छात्रों पर वापस-पर से समाप्त
कार्यकारी किया जाय।

दि. 29.5.14 प्राथमिक कार्यकारी

हेतु

निष्ठापण

0mm
3.6.14

00-05
00-05
557-03-85
01-50

Total 100-35
मौलिक संशोधन के लिए
100-35

Handwritten signature or scribble at the bottom left.

19.5.11

संशोधन विभाग द्वारा संशोधन प्रयोगों के लिए कार्यवाही शुरू की है। यदि कोई व्यक्ति अपने अपने अनुभवों के आधार पर कोई भी सुझाव देता है तो उसे प्रतिक्रिया दी जाएगी। अतः प्रतिक्रिया के माध्यम से संशोधन कार्य को अधिक प्रभावी बनाने का प्रयत्न किया जा रहा है।



अभियोग के तहत संशोधन प्रयोगों का सफलतापूर्वक समापन हो चुका है। प्रयोगों के दौरान प्राप्त हुए सभी आंकड़ों का विश्लेषण किया जा रहा है। प्रयोगों के परिणामों के आधार पर संशोधन प्रयोगों को आगे बढ़ाने का फैसला किया जाएगा। अतः प्रयोगों के माध्यम से प्राप्त हुए सभी आंकड़ों का विश्लेषण किया जा रहा है। प्रयोगों के परिणामों के आधार पर संशोधन प्रयोगों को आगे बढ़ाने का फैसला किया जाएगा। अतः प्रयोगों के माध्यम से प्राप्त हुए सभी आंकड़ों का विश्लेषण किया जा रहा है। प्रयोगों के परिणामों के आधार पर संशोधन प्रयोगों को आगे बढ़ाने का फैसला किया जाएगा।

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