

SP-7  
12-10-12

In the High Court of Judicature at Patna.

( Civil Writ Jurisdiction )

C.W.J.C.No. \_\_\_\_\_ of 2012

Brajendra Kumar Yadav .....Petitioner

Versus

~~The State of Bihar~~  
The Collector, Madhepura and others.....Opposite Parties

Subject:- *others mize*

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In the High Court of Judicature at Patna.

( Civil Writ Jurisdiction )

C.W.J.C.No. \_\_\_\_\_ of 2012.

Brajendra Kumar Yadav .....Petitioner

Versus

~~The State of Bihar~~  
~~The Collector, Madhepura and others....~~ Opposite Parties.

-: SYNOPSIS :-

This is an application for quashing of order dated 31.8.2012 passed by learned Sub Judge, Ist, Senior Division, Madhepura in T.S.No.13 of 2006 by which amendment petition filed by petitioner has been rejected

2006  
PARA-3

Petitioner filed T.S.No.13 of 2006 before learned Sub Judge, Ist, Madhepura for declaration of title.

PARA-5

Suit land is ancestral property of petitioner.

PARA-6

Petitioner got aforesaid land through petition.

PARA-7

In Municipal Survey there was done made wrong entry for suit land.

(11)

PARA-9            Petitioner was coming in possession over the land.

4.3.2006  
PARA-11            During pendency of suit defendants came with anti-  
  
Social men captured the land.

27.6.2011            Petitioner filed amendment petition.  
Annexure-1  
PARA-14

23.8.2011            Defendant filed rejoinder.  
PARA-15  
Annexure-2

31.8.2012            Court below rejected the petition.  
PARA-16  
Annexure-3

Para-18            Proposed amendment is formal in nature.

PARA-19            Proposed amendment does not change the nature of suit.

Hende this Writ application.

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BIHAR CIRCLE

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AUTH NO. 3185 DT. 16/12/2008

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In the High Court of Judicature at Patna.

( Civil Writ Jurisdiction )

C.W.J.C.No. \_\_\_\_\_ of 2012.

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

And

In the matter of :-

Brajendra Kumar Yadav Son of Late Kriti Narayan  
Mandal, Resident of Village-Ward No.2, Madhepura,  
Police Station and District-Madhepura.

Plaintiff..... Petitioner.

Versus

1. The State of Bihar
2. The Collector, Madhepura.
3. B.N.Mandal University, Madhepura through Vice  
Chancellor.

4. Vice Chancellor, B.N.Mandal University,

Madhepura.

5. Registrar, B.N.Mandal University, Madhepura.

6. The Principal, Parwati Bigyan Mahavidyalaya,

Madhepura.

Defendants ..... Opposite Parties.

Suit valued at Rs.31,000/-

Application valued at Rs.31,000/-

To,

The Hon'ble Ms. Justice 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 abovenamed

petitioner;

Most Respectfully Sheweth :-

1. That this is an application for

quashing of order dated 31.8.2012 passed by learned Sub Judge Ist, Senior Division, Madhepura in T.S.No. 13 of 2006 whereby petitioner dated 27.6.2011 filed under Order 6 Rule 17 read with Section 151 of Code of Civil Procedure by the petitioner for amendment in the plaint has been rejected.

2. That the petitioner is the citizen of India and lives within territorial Jurisdiction of this Hon'ble Cou rt.

3. That the plaintiff petitioner filed T.S.No.13 of 2006 before learned Sub Judge, Ist, Madhepura for declaration of title and confirmation of possession over the suit land.

4. That suit land in question is situated at Mauza Madhepura Ward No.1, Police Station and District-Madhepura Area 2 Katha 10 dhurs Khata No.

327 C.S.961 M.S.Plot No.1656, 1655, 2755, 2756, 1829,  
1830, 1831.

5. That aforesaid suit land is the ancestral property of the plaintiff petitioner.
6. That the plaintiff petitioner got aforesaid suit land after partition and coming in possession over the land and he has been paying rent and obtained rent receipt.
7. That during Municipal Survey operation the plaintiff petitioner was out of Madhepura and therefore he could not take proper step to get his name recorded in Municipal Survey operation and wrong entry was recorded in the name of defendant.
8. That in last week of March 2005 when authority of University came and invaded their right then petitioner came to know that University authority on the basis of illegal forged deed of gift claimed

over the suit land the petitioner brought this suit.

9. That the plaintiff petitioner was along coming in possession over the suit land by constructing his phoos house and fencing it with Tatti boundry and was living therein.

10. That during pendency of the case the defendants started to invade in the right, title and possession of the plaintiff in respect of the suit land on the basis of wrong survey entry.

11. That on 4.3.2006 the defendants on the strength of muscle men and anti social elements started to take foundation over the suit land forcefully to amalgamated the suit land with the land of College.

12. That thereafter the plaintiff got appointed a Pleader Commissioner by the Court for local inspection who made local inspection and submitted his report.

13. That during pendency of the suit the



defendant forcefully dispossessed the plaintiff entirely from the suit land and fenced and amalgamated the suit land in their own land hence for such subsequent event it is necessary to amend the plaint.

14. That the plaintiff petitioner filed a petition dated 27.6.2011 under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for making some amendment in the plaint.

A true copy of the  
petition dated 27.6.2011  
is annexed herewith and  
marked as Annexure-1 to  
this application.

15. That the defendant filed rejoinder stating therein that the amendment petition is not maintainable and fit to be rejected.

A true copy of the

rejoinder dated 23.8.2011  
is annexed herewith and  
marked as Annexure-2 to  
this application.

16. That after hearing the parties the  
learned Court below vide order dated 31.8.2012 reje-  
cted the amendment petition dated 27.6.2011 filed  
by the petitioner holding that it is not maintainable.

A true copy of the order  
dated 31.8.2012 is annexed  
herewith and marked as  
Annexure-3 to this appli-  
cation.

17. That learned Court below has not  
considered the case of the petitioner and rejected  
the same.

18. That the proposed amendment is formal

in nature and it is necessary due to subsequent event during pendency of the suit.

19. That the proposed amendment does not change the nature of the case nor prejudice the defendant in any way.

20. That during pendency of the suit the defendants have taken forceful possession over the entire suit land by constructing pucca boundry wall and amalgamated the suit land with their own land, hence it is subsequent event and it is necessary to make such amendment in the plaint.

21. That for the ends of Justice and for the just decision and to avoid multiplicity of the suit it has become essential to amend the plaint as proposed.

22. That the petitioner has no any other alternative and efficacious remedy other than by way

of this application.

23. That the petitioner has not moved earlier before Hon'ble High Court for the reliefs as prayed in para-1 to this application.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this application, issue Rule NISI, calling upon the Respondents and after hearing the parties be pleased to allow this application and grant reliefs as prayed in Para-1 to this application.

And/Or

Pass such other order or orders as your Lordships may deem fit and proper.

And for this, the petitioner shall ever pray.

AFFIDAVIT.

I, Brajendra Kumar Yadav, aged about 70 years, Son of Late Kriti Narayan Mandal, Resident of Village-Ward No.2 Madhepura, P.S. and District-Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am Petitioner in this case and as such am well acquainted with the facts and circumstances of the case.

2. That the contents of this petition have been read over and explained to me in Hindi which I have fully understood the same and the statements of facts made in Paragraph Nos. 2 to 6 and 8 to 21 are true to my knowledge and those made in Paragraph Nos. 7

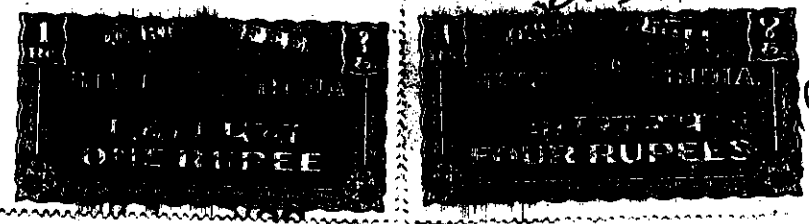
are based upon informations derived from the records of the case which I believe to be true and the rest are by way of submissions to this Hon'ble Court.

3. That the annexures are true/photostat copies of their respective originals.

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30. [Redacted]

In

Court of Sub Judge 1 Madhipura

The court of Sub-Judge-2,  
Madhipura.

F 2  
11/8  
27.12.11

22912

T.S.No.13/06

Brajendra Kumar Yadav - - - - - Plaintiff.

Versus

The Collector & others - - - - - Defendants.

The humble petition U/O 6 Rule 17  
and U/S 151 of the C.P.C. on behalf  
of the plaintiff, most respectful

sheweth:-

- 1) That, the plaintiff has filed the suit for declaration of title and confirmation of possession over the suit land and for other reliefs.
- 2) That, the plaintiff was already in possession over the suit land by constructing his phoos house and fencing it with Tattibounda and was living there in.
- 3) That, after filing suit the defendant started

GOVT. OF BIHAR  
REGISTRATION, EGRESS & PROHIBITION DEPT.  
MADHUPURA SCORE, MADHUPURA

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Authorization No. 2037

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22.9.2012

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N.S.

to invade in the right, title and possession of the plaintiff in respect of the suit land on the basis of wrong survey entry and on 4.3.06 they on the strength of muscle man and along with labourer and Mason - anti-social element started to take foundation over the suit land forcefully with to amalgamated the suit land with the land of the College thereafter the plaintiff got appointed a pleader commissioner by the court for local inspection who made local inspection and submitted his report.



4) That, during the pendency of the suit the defendant forcefully disposed the plaintiff <sup>intently</sup> entered from the suit land and fenced and amalgamated the suit land in their own land and as for such subsequent event it has become necessary to amend the plaint in the following way:-

(1) That, in between para 21 and ~~before~~ para 22 of the plaint the following sentence may be added by inserting new para 21(a) in the plaint ~~21(c) that the~~

*Handwritten mark*

*Handwritten mark*

21(A) That the

plaintiff was coming in peaceful continuous possession over the suit land and after filing the suit the defts with the help of muscle man and staffs with <sup>along</sup> labourers and Masons and anti-social element started to dig foundation over the suit land on 4.3.2006 and gradually taken forceful possession over entire the suit land by constructing pucca boundary wall and thereby amalgamated the suit land with their own land.

The defts further <sup>deft.</sup> got ~~the suit land~~, constructed pucca house over the suit land which continued uptill May 2011. Such possession of the deft is wrong, illegal, collusive ~~in~~ and is that of trespasser having no manner of right, title and interest over the suit land and the deft. is bound to vacate the suit land by demolishing aforesaid illegal construction from the suit land and to hand over the same to the plaintiff.

(ii) That, the relief portion of the plaint may be amended by adding a new relief no B(i) just after (B)

*Handwritten signature/initials*



*Handwritten initials*



14

of the relief in the following way:-

B(1) That, on above adjudication it may be held and declared that during the pendency of the suit the deft.

have forcefully dispossessed the plff. from the suit land and the possession of the deft. over the suit land

is wrong and illegal and that of tress passer and the defts maybe directed to vacate the same and to hand

over the possession to the plainiff within stipulated period or the possession may be delivered to the plff.

through the process of the court by demolishing the construction standing over the same.

5) That, the proposed amendment is formal in nature and it is necessary due to the subsequent event.

6) That, for the ends of justice and for the just decision and to avoid multiplicity of the suit it has become essential to amend the plaint as proposed.

7) That, the proposed amendment does not change the nature of the case nor prejudice the defendant in any way.

*Rs*



*13/2*

-5-

Under the facts and circumstances,  
 it is most humbly and respectfully  
 prayed that your honour may <sup>be</sup> graciously  
 pleased to allow this petition and to  
 allow to amend the plaint in the afore-  
 said way for the ends of justice, and  
 for this the pliffs. shall ever pray.

*Am*

Plaintiff

*33/K/11/2015*

through

Advocate.

*2*

Verification:

I, *Brajendra Kumar Jaiswal*, the pliff. do hereby solemnly  
 affirm and declare that the contents of above paras  
 which have been read over and explained to me in Hindi  
 are true to the best of my knowledge and belief.

Deponent.

*33/K/11/2015*

Advocate,

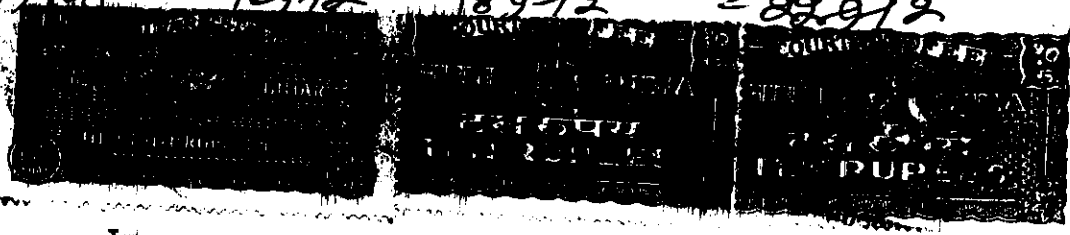
*27.6.11*

Dated:-



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In

The court of Sub-Judge-2,  
Madhipura.

F 30  
22-11-06

T.S.No.13/2006

Brajendra Kr. Yadav - - - - - Plaintiff.

Versus

The Collector & others - - - - - Defendants.

Affidavit.

I, Brajendra Kr. Yadav, aged about 68 years s/o  
late Kirti Nr Mandal of village Tilkura  
P.S. Muvliganj Dist. Madhipura, do hereby  
solemnly affirm and declare as follows -

1. That, I am pliff. in this suit and well acquainted with the facts of the suit.
2. That, the contents of the amendment petition are true to the best of my personal knowledge and belief.
3. That, the contents of this affidavit are true to the best of my knowledge and belief.



Brajendra Kr. Yadav

Deponent.

(पक्ष कर्ता श्री/श्री मती) .....  
जिसका पहचान श्री R. P. Singh .....  
अधिवक्ता से किया गया है।  
समय 12-4 .....  
वालों को पढ़ कर वाक्यों को खड़ी पाकर  
पक्ष भाव से सही रूप में लिखा है।

गणेश चंद्र (31/6/06)  
Identified by me.

Randhir Prasad Singh  
Advocate. 27-6-11

मि. रि. सि. वा. 2-6-11

Handwritten signature and text

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Annexure-2  
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ब- अदालत,

असेनिक न्यायाधीश,

वरीय कोर्ट i, मधेपुरा

दिमानी वाद सं० 13/08

ब्रजेन्द्र कुमार यादव ---- मुद्देय

व नाम

विधवार सरकार वगैरह --- मुदा०

रिजवाइमडरतरफ से मुदा० वरीखलाफ आवेदन मुद्देय मरकमा

तऽ 27.6.11 निम्नगंक्त है :

1. मुद्देय को कोई हक या वजह दरखास्त मजकूर दाखिल करने का नहीं है ।
2. यह कि मोकदमा हाजा वर्ष 2006 का है वो मुद्देय का सुधार आवेदन काफी देरी से दाखिल किया गया है, जो चलने योग्य नहीं है
3. यह कि मुद्देय ने गलत क्यामतके साथ सुधार आवेदन दाखिल किया जिस आधार परभी मुद्देय का आवेदन काविल खारीज के हैं ।
4. यह कि मुदा० ने मुद्देय को विवादी जमीन से वेदखल मुद्देय का इफजमात गलत है कि मुदा० ने उसे वेदखल कर पकका लिया है । इसके निवमत मुद्देय को लाजीम है कि अपना उक्त के समक्ष सावित करें ।
5. यह कि मुद्देय द्वारा प्रस्तावित सुधार से मोकदमा प्रभावित होता है



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इस आधार पर भी उक्त सुधार मंजूर होने लायक नहीं है ।  
8. यह कि मुद्दे द्वारा अरजी नालिषा में प्रस्तावित सुधार की  
कोई आवश्यकता नहीं है । मुद्दे अपना हकीयत सापित करते हैं तभी  
वह दखल पाने की प्रार्थना कर सकते हैं । मौकदमा हाजा में निव्वत  
विवाद के फैसले के लिए उक्त सुधार की कोई आवश्यकता नहीं है ।



अतः उपरोक्त परिस्थिति में श्रीमान् से निवेदन  
है कि मुद्दे का आवेदन वास्ते सुधार अरजी  
नालिषा खारीज किया जाय कि हकरती होवे ।

अरजी प्रियवी मुदा 0

~~Handwritten signature and date 22/9/11~~

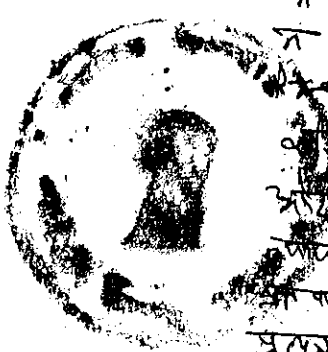
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A. Kalam  
अधिवक्ता  
23.8.11



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इस पत्रकारिता दृष्टि के लिए  
वादी को वाद पर ही संशोधन करना  
आवश्यक है जल्द। प्रजासिद्ध संशोधन  
आवेदन पर ही विचार करना है। प्रजासिद्ध  
संशोधन आधिकारिक प्रकृति का है। वादी के  
पत्रकारिता दृष्टि के कारण वाद पर ही  
संशोधन करना आवश्यक है जल्द।  
वादी के लिए।

इस दृष्टि के लिए वादी को  
संशोधन करना आवश्यक है। प्रजासिद्ध  
आवेदन पर ही विचार करना है। प्रजासिद्ध  
संशोधन आधिकारिक प्रकृति का है। वादी के  
पत्रकारिता दृष्टि के कारण वाद पर ही  
संशोधन करना आवश्यक है जल्द।  
वादी के लिए।



इस दृष्टि के लिए वादी को  
संशोधन करना आवश्यक है। प्रजासिद्ध  
आवेदन पर ही विचार करना है। प्रजासिद्ध  
संशोधन आधिकारिक प्रकृति का है। वादी के  
पत्रकारिता दृष्टि के कारण वाद पर ही  
संशोधन करना आवश्यक है जल्द।  
वादी के लिए।





Te

न्यायालय अतिरिक्त न्याय वंश प्रथम वरीय कोर्ट मधुपुरा

ब्रजेन्द्र कुमार यास बनाम- बिहार सरकार वीर

टी० एल 13/ 86

31.8.12- उन्मायवहा की पेरवी हे। वाद आज आदेशार्थ प्रस्तुत हुआ।  
आदेश

वादीकी ओरसे सिर्फ 27.8.11 को आदेश 8 नियम 17 तर्कित धारा 15।  
सी पी सी के अस्तर्गत वापटा पत्र से समीपित संगोधान आवेदन दाखिल  
किया गया जिसकी प्रति दूसरे पक्षको दी गई प्रस्तुत वाद वादीकी ओर  
से वाद ग्रस्त जमीन पर स्वयं घोषित करने तथा फल कक्षा  
को सम्पुष्ट करने हेतु ग्यागयाहे। वादी वाद ग्रस्त जमीन पर फल का धार  
बनाकर उसके कक्षा में फल आ रहा हे। और टाटी से चारो ओर  
से उसे घेर रखा हे। प्रस्तुत वाद दाखिल करने के पश्चात  
प्रतिवादी उसके अधिकार एवं फल कक्षामें अतिक्रमण करना  
शुरू कर दियाहे। क्योंकि वाद ग्रस्त  
जमीन का सर्वे छातियान गलत हंग से  
उसके नाम पक्क हो गयाहे दिनांक  
4.2.06 को जखर्ती कागज के बल  
पर असमाजिक तत्वों की सहायता से  
वाद ग्रस्त जमीन को कालेज की जमीन में  
मिला लिया। जमीन के स्थानीय निरीक्षण  
हेतु वादी की ओरसे अधिवक्ता आयुक्त  
की बहाली करायी गई। स्थल निरीक्षण  
के बाद अधिवक्ता आयुक्त अथककक अपना  
प्रतिवेदन समीपित किया। वाद लंबित रहने  
के ककककक दौरान प्रतिवादी ने जखर्स्ती सम्पूर्ण  
वादग्रस्त सम्पति से वेदखाल कर दिया  
और वाद ग्रस्त जमीन को अपने में मिलाकीलिया

जगातार- उक्त पंचायती धटनाके बाद वादी को वाद पत्र में संगोथान करना आवश्यक हो गया। प्रस्तावित संगोथान आवेदन पत्र में दिया गया है प्रतिवेदि संगोथान औपचारिक प्रकृति का है। वादमें

पंचायती धटनाके कारण वाद पत्र में संगोथान करना आवश्यक हो गया है। वादके सही निणयित हेतु प्रथम वाद की बहुलता को दोजने के लिए उक्त संगोथान किया गया जाना आवश्यक है।

प्रस्तावित संगोथानके बाद के स्वरूप में कोई परिष्कार नहीं होगा और न ही इसके प्रतिवादीकसी प्रकार से - नहीं होगे।

अतः उक्त संगिन प्रीरीस्थातियों में वादीकी

ओसे दायित्व प्रस्तावित संगोथान न्यायिक में स्वीकृत करना न्यायोचित है। प्रतिवादी पक्ष की ओसे दिनांक 27.5.12

से प्रत्युत्तर दायित्व कर कहा गया है कि वादी को

ओसे दायित्व संगोथान आवेदन विधि सम्मत

नहीं है तथा परिष्कार अधीनस्थ के वाधित

नी है वादी की ओसे दायित्व संगोथान आवेदन

साधारण प्रकृति का नहीं है। तथा उक्त

संगोथान से वाद की मूल प्रकृति एवं प्रतिकार

में परिष्कार हो जायेगा। वादीका यह कहना

कि वाद ग्रस्त झूमि पर वह फुल का धार

बनाकर उसका हाट्टी से घोरकर उस पर दखालकार चाहि।

विकूल असत्य और आधारहीन है। जबकि प्रतिवादी ने

विपरीत कथान में स्पष्ट रूपसे उल्लेख किया है। कि वादग्रस्त झूमि

वाहारीदवारी से घेरा हुआ है जिसके अन्दर पार्वती विज्ञान महाविद्यालय

मधोपुराका पक्का भावन और कीडा मैदान अवीस्थात है। वादी पक्षका

यह कहना विकूल गलत कि हाल सर्वे छातियान के

गलत इन्दराज के आधार पर प्रतिवादी ने

वादीको असमाजिक तत्वों के सकल वाद पर वेदखाल

लगातार- कर दिया। इसके पूर्व श्री वादी वादकी ओर से दिनांक 28.8.06 को एक ~~दस्तावेज~~ संगोपान दिया गया था जिसको न्यायालय द्वारा स्वीकृत किया गया। इस प्रकार वादीकी ओरसे दाखिल संगोपान आवेदनमें कोई बल नहीं होने के कारण खारिज करने योग्य है।

उभय पक्षों के तर्कों को सुना तथा अम्बालेडा का संगोपान आवेदन एवं जवाब का अफ्लोक्नीक्या। अम्बालेडा के अफ्लोक्न से प्रतीत होता है कि ~~इसके~~ दिनांक 28.8.06 को वादी - ~~डाखिल~~ संगोपान आवेदन दिया गया था जिस पर न्यायस्थल द्वारा उभयपक्षों को सुनने के पश्चात वादीके संगोपान आवेदन दिनांक 28.8.06 को स्वीकृत किया गया। किन्तु वादी द्वारा उक्त दिनांक 28.8.06 के संगोपान आवेदन में ऐसी किसी तबत का उल्लेख नहीं किया गया है कि उसे दिनांक 4.3.06 को प्रतिवादी पक्ष द्वारा वाद मुक्ति जमीन के जवदस्ती के ~~वेकखाल~~ कर दिया गया। अब वादी द्वारा पुनः संगोपान आवेदन दिनांक 27.8.11 सुना दाखिल कर कहा गया है कि वादी को प्रतिवादी द्वारा जवदस्ती वाद मुक्ति जमीन के ~~वेकखाल~~ दिनांक 4.3.06 को कर दिया गया है जो भारतीय ताक्ष्य अधिनियम के धारा 115 के प्रावधानके प्रतिकूल है। ऐसी स्थिति में वादी पक्ष की ओरसे दाखिल संगोपान आवेदन में कोई विधिक बल नहीं होने के कारण न्यायहित में उसे खारिज किया जाता है। वाद दिनांक 14.8.12 को वास्ते अग्रिम कारवाई।

लेखापित

ह0/- अस्पष्ट

न्याय दंडा