
(2000) 08 PAT CK 0025
In the Patna High Court
Case No : C.R. No. 248 of 2000

Prafulla Narain Dwary

APPELLANT

Vs

Nil Narain Dwary and Another

RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Citation : (2001) 1 PLJR 600

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Anil Kumar Jha "Astik", for the Appellant; Shashi Shekhar Dwivedi and Ravi Shankar Dwivedi for Opposite Parties 1 and 2, for the Respondent

Judgement

Gurusharan Sharma, J.—Heard the parties Plaintiffs-opposite parties filed Title (Partition) Suit No. 683 of 1993 for partition of their half share with Defendant No. 9 in the properties detailed in Schedules I and II and half share in Schedule III properties. Further relief was sought that the properties alienated by Defendants 1 and 2 or their father may be allotted to the share of Defendant first party.

2. Defendants 1 to 5 in their written statement stated, inter-alia, that Badri narain Dwary and his two sons, Indra Narain Dwary and Brahma Narain Dwary were separate in mess and business. On 19.12.1999, Defendants 1 to 5 filed a petition, for amendment in the written statement, whereby besides other amendments wanted to add new paragraph 19A after paragraph 19. They wanted to add at some properties purchased in the name of Plaintiff may be treated as joint family property and be partitioned.

3. Plaintiff opposed the prayer claiming those properties to be his acquired properties, out of his salary as Lecturer In Deoghar College, which cannot be treated as joint family properties.

4. It appears that Defendants in their written statement claimed previous partition in 1961. during life time of Badri Narain Dwary. Evidence of the parties

as on the verge of the conclusion in the lit, but no reference was made regard-g properties in question. Defendants in paragraph 19 of the written statement had accepted those properties to have been purchased by the Plaintiff.

5. It is true that the Defendants' case was that there was previous partition and they had also accepted that Plaintiff purchased certain lands and now they have taken the stand that in case there was no partition the property purchased by plain-Bf were also partible.

6. It is well settled that it was open to the Defendants to take even contrary or Contradictory stand and thereby cause of potion was not in any manner affected. That may apply in the case of plaint being amended so as to introduce a new cause faction. Amendment of written statement cannot be considered on the same principle as an amendment to the plaint.

7. I, therefore, set aside the impugned order and allow addition of new paragraph 19A in the written statement led by Defendants 1 to 5.

This Revision application is disposed of.