

COURT OF SUB-JUDGE - I PATKRI

P. suit no. 107/15

Sudhir Kr. Thakur — Plaintiff

vs.

Ram Sewak Thakur & others — Defendants.

ORDER

8.5.2023

The Case record has been put up for order on petition for amendment in pleadings dt. 25.4.2023 filed on behalf of the plaintiff and other party v/s 151 CPC filed on behalf of one applicant's third party namely Nareh mahto for removal of restraintment order dt. 9.10.2017 ~~and~~ and rejoinder to both petitions dt. 6.5.2023 filed on behalf of the defendant.

The plaintiff has prayed that due to typographical error, in suit land at page 20 of the plaint Khata no-83 Kherra 349 has been wrongly mentioned on the said Kherra belongs to Khata no-130 belonging to one Binda Thakur who sold it to one Yogal Mahto vide sale deed dt. 6.2.2001. The actual suit land is of Kherra-379. Hence the same may kindly be amended.

Another party v/s 151 CPC states that the land under Khata no 130 Kherra 349 is the purchased property of his father and after his death the

same B under consideration of sale
but vide order dt. 9.10.2017 the
sale has been restrained which ought
not to be removed. So the restraint
order passed so may kindly be revoked.

The defendant has asserted
in his first rejoinder that the
amendment is sought after eight
years of filing the suit after framing
of issues and asserting all facts as
true in verification & pleading to lay
referring judgment reported in AIR 2009 SC 1117,
2008(2) CIVIL CT 412 (SC), 2006 (4) CIVIL (C) 8 AC
they have asserted that amendment can't
be allowed after verification is withdrawn
and on mere error in facts. So the
petition is fit to be rejected.

Regarding author para 15)
CPC, he has asserted that if the land
enquiry was made a subject matter
of partition which the petitioner deen
it his own then he would have filed
a petition o/o R.O for being a party
and thereafter his petition for
maintainability, so the petition is
lawless and fit to be rejected.

contd

Hence both sides, perused the case record. From perusal of the case record it transpires that the suit land being Khata no. 83 Khora no. 349 area 43 dec has been mentioned in the plaint which has not been even claimed by the defendants as of his own. Further the restraint order of this court has been passed on 9.10.2017 directing parties for maintaining status quo on the suit land. ~~and~~ Though which the registry office has blocked the alienation. The Issues are settled on 7.8.2019 and till then the plaintiff has been able to examine only single formal witness after last chance, so the non production of witnesses during course of last four years reflects express laches on the part of the plaintiff. Hence taking consideration of the direction made in order dt. 9.10.2017 regarding plaintiff's conduct, the said order stands recalled. There stands no restraint order on the suit land.

Further this court finds that the plaintiff is the marker of the case and he admits that Khata no. 130 Khora. 349 is the land of the applicant

and that need correction in the
pleat. The defendant has no specific
objection thereto. Hence making
correction to the pleadings will
be justified in adjudication of
the right & interest of the parties
in reference. Accordingly the
amendment petition stands allowed
on cost of Rs. 1000/- payable to
the counterparty defendant. The plaintiff
is directed to do necessary proper
amendment in the pleat within
14 days from this order. As the
case on for evidence.


8/5/2023
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