

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15810 of 2013

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Smt. Mira Devi Wife of Shri Shailendra Kumar Sahu R/O Village- Sahu Parbatta,
P.O. and P.S.- Sahu Parbatta, District- Bhagalpur.

.... Petitioner/s

Versus

1. Smt. Manju Devi Wife of Shri Jitendra Kumar Sahu.
2. Amod Kumar Sahu S/O Jitendra Kumar Sahu.
3. Dharmendra Kumar Sahu S/O Jitendra Kumar Sahu all Resident Of Village
Sahu Parbatta P.S. and P.O. Sahu Parbatta, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anupa Nand Jha, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-02-2015

Heard the learned counsel appearing on behalf of the
petitioner.

Calling in question the order by which the learned court
below has allowed the amendment sought for by the plaintiff in the
plaint, the present application under Article 227 of the Constitution of
India has been filed.

The learned counsel for the petitioner has submitted that
the plaintiff has filed this title eviction suit wherein the relief for
declaration that the plaintiff is the owner of the suit premises has been
prayed with further relief for a decree for eviction against the present



petitioner. It has been submitted by the learned counsel that subsequently the plaintiff has sought for amendment deleting the declaration of her title over the suit property and instead has tried to introduce the facts which convert the earlier suit into a pure eviction suit. The learned counsel, during the course of argument, has also pointed out that the present petitioner has filed T.S. No. 12 of 2010 prior to the present Eviction Suit wherein she has sought for the partition of the suit property, and also that the present suit has been filed just in retaliation of the said suit. It has also been submitted by the learned counsel for the petitioner that the plaintiff and the defendant in the present suit are closely related (Gotni) and therefore also the present suit as well as prayer for amendment is not bonafide.

After considering the submissions and perusal of the impugned order, it is limpid that the plaintiff-respondents has filed the present suit as title eviction suit and has also prayed for the relief for eviction against the defendant. From the perusal of the amendment sought for, it is transparent that the amendments relate to some typing mistakes and also introduce details relating to the default in payment of rent and personal necessity which are there in the plaint prior to that. From the issues as framed in the suit prior to the amendment, it is also apparent that an issue with regard to the relationship of landlord and tenant as existing between the plaintiff and the



defendant has also been framed. It is not the case of the present petitioner that the said issue was not framed without her knowledge. Moreover, from the perusal of the plaint (Annexure-1) it is manifest that the averments regarding the tenancy and the default in payment of rent are already there. By the amendment the plaintiff has clarified the period for which the default has occurred and has also stated that she requires the suit for residence. These averments do not alter the nature and scope of the suit. The learned court below has also found that the amendments have not been prayed belatedly.

In that view of the matter, the submission on behalf of the petitioner that the proposed amendment would change the nature and scope of the suit is misconceived. However, the learned counsel for the petitioner has also submitted that though the amendment has been allowed after imposing the cost of Rs. 500/- but the said cost was not paid within the time frame and has been deposited only on 02.02.2015 and in that view of the matter, the amendment as allowed by the learned court below would perforce the provision of Order VI Rule 18 C.P.C. now cannot be permitted to be introduced in the plaint. It has also been submitted by the learned counsel that the petitioner has not been given the opportunity to file additional written statement by the learned court below while allowing the prayer for amendment.

In view of the aforesaid reasons and discussions, this

Court is not inclined to interfere with the impugned order but grants the opportunity to the petitioner to file appropriate petition before the learned court below invoking the provision of Order VI Rule 18 C.P.C. stating the relevant facts and circumstances and also making the prayer for opportunity to file additional written statement if so advised. The learned court below is also directed to dispose of the said petition if filed by the petitioner expeditiously and without unnecessary delay.

(V. Nath, J)

Devendra/-

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