

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15441 of 2010

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1. Nirmal Kumar Shrivastava S/O Late Sidh Nath Prasad R/O Mohalla-
Turha Toli, Buxar, P.S.- Buxar, Distt.- Buxar **Petitioner.**

Versus

1. Ram Govind Choudhary S/O Late Dukh Haran Choudhary R/O Vill.-
Cheura, P.S.- Narali, Distt.- Balia (U.P.), Presently R/O Mohalla- Rurha
Toli, Buxar, P.S.- Buxr, Distt.- Buxar

2. Shesh Nath Choudhary S/O Late Dukh Haran Choudhary R/O Vill.-
Cheura, P.S.- Narali, Distt.- Balia (U.P.), Presently R/O Mohalla- Rurha
Toli, Buxar, P.S.- Buxr, Distt.- Buxar

3. Shree Mahanth Venktachary Chella - Chaturbhujachari Vill.- Ahirauli,
P.S.- Buxar (Industrial), Distt.- Buxar **Respondents.**

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Appearance :

For the Petitioner/s : Mr. Hari Narayan Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

5 31-08-2015

Heard Mr. Raghib Ahsan, the learned senior

counsel for the petitioner, Ms. Mallika Mazumdar, the learned

counsel for the respondent nos.1 and 2 and Mr. Sanjay Kumar

Ghoswaray, the learned counsel for the respondent no.3.

Assailing the legal acceptability of the
impugned order rejecting the prayer of the plaintiff for
amendment in the plaint, the present application under Article
227 of the Constitution of India has been filed.

The plaintiff has filed the suit for declaration
that the sale deed dated 20.09.1990 could not affect the title of
the plaintiff. The respondent-defendants appeared and filed their
written statement contesting the relief prayed by the plaintiff.
During the pendency of the suit the plaintiff filed a petition on



10.11.2008 praying for amendment in the plaint seeking to incorporate the relief regarding the confirmation of possession and in the alternative for recovery of possession, if found dispossessed during the pendency of the suit. The plaintiff has also sought to add paragraph-11A containing the statement that the defendants have started collecting materials for construction. The learned court below by the impugned order has rejected the prayer of the plaintiff-petitioner firstly, on the ground that the amendment has been sought for after long delay and secondly the suit is of the year 1991 and allowing the amendment involves granting opportunity to the defendants to file written statement which would further delay the disposal of the suit.

After considering the submissions and the materials on record, it is manifest that the plaintiff-petitioner initially has filed the suit as a declaratory suit seeking the declaration that the sale deed dated 20.09.1990 would not affect the title of the plaintiff. Subsequently however, the prayer for amendment has been made and in substance the prayer is for adding the relief with regard to confirmation of possession or recovery of possession in case of dispossession. From the submissions on behalf of the parties, it is apparent that the issue of possession is already involved in the suit inasmuch as the plaintiff claims himself to be in possession wherein the

defendants have claimed themselves to be in possession over the suit land. In this view of the matter, the amendment if allowed by adding the relief with regard to possession would not prejudice the case of the defendants. Moreover the evidence of the plaintiff according to the learned senior counsel for the petitioner is still to be closed.

After considering the aforesaid facts and circumstances, this court holds that this writ application has got merit and the prayer of the plaintiff-petitioner for amendment as sought should be allowed. Accordingly, the writ application is allowed and the impugned order is quashed but in order to balance the equity as the amendment has been sought belatedly, this order shall be subject to payment of cost of Rs.2500/- to the respondent 1st set and Rs.2500/- to the respondent 2nd set , which must be paid within one month from the date of receipt/production of a copy of this order in the court below. The learned senior counsel for the petitioner has fairly submitted that the plaintiff would complete his evidence within one month and would not unnecessarily delay the disposal of the suit.

Accordingly, the writ application is allowed with aforesaid observations and directions.

(V. Nath, J)

Nitesh/-

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