

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2507 of 2011

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1. Rajesh Kumar @ Rajesh Prasad Son Of Gopalganj Resident Of Mohalla - Haldi
Hatta Maharajganj, P.O. & P.S. - Maharajganj, District - Siwan

.... Petitioner/s

Versus

1. Pawan Kumar Son Of Late Prahalad Sah Resident Of Mohalla - Haldi Hatta,
Maharajganj P.O. And P.S. Maharajganj, District - Siwan
2. Sri Ramjee Prasad Son Of Late Prahalad Sah Resident Of Mohalla - Haldi
Hatta, Maharajganj P.O. And P.S. Maharajganj, District - Siwan
3. Urmila Devi W/O Late Prahalad Sah Resident Of Mohalla - Haldi Hatta,
Maharajganj P.O. And P.S. Maharajganj, District - Siwan
4. Mansa Devi D/O Late Prahalad Sah Resident Of Mohalla - Haldi Hatta,
Maharajganj P.O. And P.S. Maharajganj, District - Siwan
5. Mira Devi D/O Late Prahalad Sah Resident Of Mohalla - Haldi Hatta,
Maharajganj P.O. And P.S. Maharajganj, District - Siwan
6. Sulochana Devi Daughter Of Late Prahalad Sah Resident Of Mohalla - Haldi
Hatta, Maharajganj P.O. And P.S. Maharajganj, District - Siwan
7. Fulmati Devi D/O Late Prahalad Sah Resident Of Mohalla - Haldi Hatta,
Maharajganj P.O. And P.S. Maharajganj, District - Siwan
8. Draupdi Devi D/O Late Prahalad Sah Resident Of Mohalla - Haldi Hatta,
Maharajganj P.O. And P.S. Maharajganj, District - Siwan
9. Gopaljee Prasad Son Of Late Ram Chandra Prasad Resident Of Mohalla - Haldi
Hatta, Maharajganj P.O. And P.S. Maharajganj, District - Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Singh

For the Respondent/s : Mr. Raghav Prasad

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 19-08-2015

Heard the parties.

The defendant-petitioner of Eviction suit no. 5 of 1997 has filed
the present application aggrieved by the order dated 6.8.2010 passed
by the Trial Court refusing slight amendment in one of the paragraphs
(paragraph no. 4) of the written statement of the defendant-tenant.

The suit was filed for eviction on the ground of personal



necessity as well as default in payment of rent. The plaintiffs examined all the witnesses. Only the cross-examination of the plaintiff was required to be done when the application (Annexure-1) was filed seeking amendment in the written statement which has been rejected by the Trial Court expressing its apprehension that the same will have prejudicial effect on the case of the plaintiffs.

In paragraph 4 of the written statement, the defendant has stated that initially the rent was fixed at a lesser amount which was gradually enhanced to Rs. 175/-. In the year 1993, the original plaintiff/landlord had obtained loan on two occasions totaling a sum of Rs. 85,000/- which was required to be adjusted from the rent @ Rs. 100/- per month. In the same paragraph, it has been stated that rent up to 31st March, 1997 was paid. By amendment, the defendant wanted addition of the words “April 1997” before the word ‘minha’. In other words, the defendant wanted to amend the written statement to mean that the adjustment of the amount advanced to the original landlord was to begin from April, 1997. The same has been considered and rejected by the Court below. Relying on *Sushil Kumar Jain vs. Manoj Kumar* reported in **2009 (4) PLJR SC 69**, it has been submitted that the amendment being formal in nature merits to be allowed.

Mr. Prasad, Counsel for the plaintiff-respondent, on the other hand, opposed the prayer. It has been submitted that at the fag end, the



application has been filed with the sole purpose to protract the proceeding which has already remained on the file of the Trial Court awaiting disposal since 1997. If such amendment is made, probably the plaintiffs may be required to seek permission for re-examination-in-chief of the plaintiffs. Of course, there is delay in such filing of the application but the legal proposition is that such amendment can be allowed at any stage of the proceeding if the same is required to be allowed to do complete justice between the parties.

Mr. Shailendra Kumar Singh has rightly relied on paragraph 9 of the report i.e. **2009 (4) PLJR SC 69** wherein the Apex Court observed as under:-

“9. That apart, a careful reading of the application for amendment of the written statement, we are of the view that the appellant seeks to only elaborate and clarify the earlier inadvertence and confusion made in his written statement. Even assuming that there was admission made by the appellant in his original written statement, then also, such admission can be explained by amendment of his written statement even by taking inconsistent pleas or substituting or altering his defence.”

Regard being had to above, this Court allows the writ application subject to imposition of cost in the sum of Rs. 1,000/- payable to the plaintiffs. The Trial Court shall permit the amendment in the plaint as sought through Annexure-1. The defendant shall thereafter proceed to cross-examine only the plaintiff. No other witness already examined on behalf of the plaintiffs shall be allowed

to be summoned for cross-examination. This Court leaves it open to the plaintiffs to seek, if so advised, re-examination-in-chief of the plaintiff by making prayer to that effect before the Trial Court which shall be considered in accordance with law.

Before parting with the records, this Court would note that the eviction matter is pending since 1997. The Trial Court shall endeavour to dispose of the same as quickly as possible preferably within five months from the date of receipt/production of a copy of this order before the Court.

(Kishore Kumar Mandal, J)

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