

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14433 of 2010

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1. Amir Hamja S/O Alam Mian Matouja R/O Vill & P.O.Dhama Pakar,
P.S.Manjha, Garh, Distt-Gopalganj **Petitioner.**

Versus

1. Mehadi Hassan S/O Sk. Jahruddin R/O Vill & P.O.Dhama Pakar,
P.S.Manjha Garh, Distt-Gopalganj
2. Mustak Ali S/O S.K.Jahruddin R/O Vill & P.O.Dhama Pakar,
P.S.Manjha Garh, Distt-Gopalganj
3. Manjur Ali S/O Alam Mian Maloufa R/O Vill & P.O.Dhama Pakar,
P.S.Manjha Garh, Distt-Gopalganj
4. Mansoor Ali S/O Alam Mian Maloufa R/O Vill & P.O.Dhama Pakar,
P.S.Manjha Garh, Distt-Gopalganj
5. Sohnawaj S/O Alam Mian Maloufa R/O Vill & P.O.Dhama Pakar,
P.S.Manjha Garh, Distt-Gopalganj
6. Abid Hussain S/O Md.Raja R/O Vill & P.O.Dhama Pakar, P.S.Manjha
Garh, Distt-Gopalganj
7. Sk.Nasruddin S/O Rafik Mian R/O Vill & P.O.Dhama Pakar,
P.S.Manjha Garh, Distt-Gopalganj
8. Megh Nath Sharma S/O Ramdaur R/O Vill & P.O.Dhama Pakar,
P.S.Manjha Garh, Distt-Gopalganj **Respondents.**

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Appearance :

For the Petitioner/s : Mr. Yogendra Prasad Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 16-02-2015 Heard Mr Yogendra Prasad Sinha, the learned
counsel appearing on behalf of the petitioner.

Calling in question the order dated 01.06.2010
passed in T.S.No.61/2006 the defendant has filed this application
under Article 227 of the Constitution of India.

The learned counsel for the petitioner has submitted
that the plaintiff filed the suit for declaration of title and
confirmation of possession with regard to Schedule-I property and
for declaration of title and recovery of possession with regard to



Schedule-II properties. It has been further submitted that a pleader commissioner was appointed on the prayer of the plaintiff to make local inspection with regard to the constructions made by the defendant over the property mentioned in Schedule-II land. The learned counsel has pointed out that the pleader commissioner submitted the report, and thereafter, the plaintiff filed the petition for amendment for adding 6 ½ dhur of land in accordance with the report of the pleader commissioner in Schedule-II properties whereas the defendants filed their objections to the report of the pleader commissioner. The learned counsel has propounded that the learned court below has wrongly allowed the prayer for amendment and has further directed for determination of the objection on behalf of the defendant to the report of the pleader commissioner, at the time of final adjudication in presence of the evidence of the parties. It has also been submitted that the amendment has been preferred by the plaintiff after about three and half years of filing the suit.

After careful consideration of the matter and considering the submissions on behalf of the petitioner, it is limpid that the plaintiff has filed the suit in the year 2006 and from the perusal of the plaint (Annexure-1 of the writ application), it is apparent that the relief has been prayed for declaration of title over

the Schedule-I and Schedule-II properties but the relief for recovery of possession has been prayed only with regard to Schedule-II properties. With regard to Schedule-I property, the plaintiff has prayed for confirmation of possession and in case of dispossession for recovery of possession. However, from the relief no.3, the further prayer of the plaintiff is for recovery of possession after demolishing the structure and construction of the defendants over the said property. The pleader commissioner who was appointed by the court on the prayer of the plaintiff for local inspection, has submitted the report that the construction of the defendant existed over 6 ½ dhur of land. The plaintiff made the prayer for amendment in view of the report submitted by the pleader commissioner on the premises that the earlier area was mentioned in the plaint only approximately by the plaintiff but after the report, the exact area over which the construction of the defendant existed was required to be corrected. The petitioner has filed his objection to the report of the pleader commissioner. The learned court below has allowed the amendment petition, and has also passed the order for consideration of the objection of the defendant after the parties have led their evidence. It is, thus, transparent that the amendment which has been sought by the plaintiff has been necessitated by the report of the pleader

commissioner and in view of the nature of the amendment the learned court below has rightly held that it would not affect the nature and scope of the suit. The objection filed by the petitioner to the report of the pleader commissioner has also been directed to be considered alongwith the evidence of the parties. In this view of the matter, this Court does not find any illegality, irregularity or error of jurisdiction in the impugned order.

The writ application is, accordingly, dismissed.

(V. Nath, J)

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