

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.436 of 2011

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1. Shiv Prasad Ahir @ Shiv Prasad
 2. Ramphal Ahir @ Rampal Rai
Both sons of Khelawan Ahir
 3. Laxman Ahir @ Laxman Yadav, son of Ram Prakash Ahir.
 4. Tulsi Ahir @ Tulsi Rai, son of Ganesh Ahir.
 5. Ram Chandra Ahir @ Ram Chandra Rai
 6. Shiv Pujan Ahir @ Shiv Pujan Rai
Both sons of Mathura Ahir.
- All residents of Lakharao, P.S.- Muffasil, District- Siwan.

.... Petitioner/s

Versus

1. New Siwan Cooperative Development and Cane Marketing Union Ltd @ New Sugar Siwan Corporation Union through Manoj Kumar Singh, son of Madan Singh, Resident of Pratappur, P.S.- Siwan, P.s.- Hussainganj, District- Siwan, Secretary, New Siwan Cooperative Development and Cane Marketing Union Ltd. Siwan.
2. Chairman, New Siwan Cooperative Development and Cane Marketing Union Ltd through Sri Ejajul Haque, son of Wajid Khan, resident of village Khalispur, P.S.- Muffasil, P.O.- Siwan, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Sinha
Mr. Arvind Kumar Sharma
For the Respondent/s : Mr. Surendra Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 11-08-2015

Heard the Counsels for the parties.

The plaintiffs of Title Suit No. 51 of 2001 have filed the writ application aggrieved by the order dated 31.8.2007 whereby the application filed by the plaintiffs on 10.1.2007 (Annexure-1) seeking amendment in the plaint has been rejected.

The suit was filed for declaration of title and recovery of possession with respect to the suit land which is/are some rooms



constructed on the land several years ago. The plaintiffs also sought a decree of permanent injunction against the defendants. Precisely, the case of the plaintiff is that the suit property is owned and possessed by them. The defendants were permitted to operate office in three rooms thereof. Subsequently, the defendants started laying claim over the same. The plaintiffs, in such circumstances, filed the suit for their removal from the suit premises after declaring right, title and interest of the plaintiffs over the suit land. A decree of permanent injunction against the defendants was also prayed. Witnesses were thereafter examined by the plaintiffs in support of the case. At this stage, the present application (Annexure-1) was filed. The contesting defendant filed rejoinder thereto. The Trial Court rejected the said application on the ground inter alia that there was delay on the part of the plaintiffs in filing such application. New facts were sought to be interjected and explanation with regard to possession of the parties was being offered by such amendment. The Trial Court also held that the relief prayed for in the suit shall also change by such amendment.

Mr. Sinha, Counsel for the petitioners has drawn attention of the Court to paragraph 9 of the writ petition in order to contend that although the petition seeking amendment was filed for amendment in certain pages/paras of the plaint but in essence, the plaintiffs wanted amendment to the effect that the agreement to sell



which the defendants claimed to have been executed in his/their favour in 1951 be declared as forged and fabricated. The defendants had claimed possession over the suit property on the basis of an agreement to sell executed in favour of the cooperative society by the ancestor of plaintiffs. He further submits that the relief which was prayed in the suit is not going to change as the plaintiffs, in any event, has prayed for declaration of his right, title and interest over the suit property. If the amendment is not permitted, the same would breed multiplicity of litigations in the sense that the plaintiffs would be required to file a different suit for declaring alleged agreement to sell in favour of the defendants as forged and fabricated document. Considering the wide jurisdiction conferred on the Court under Order VI Rule 17 of the Code of Civil Procedure (for short 'the Code') and the particular facts of the case, the Court committed material irregularity in not allowing the same. The jurisdiction vested in the Court has arbitrarily not exercised.

In contra, Counsel for the respondents has submitted that in case such amendment is allowed, the same shall cause serious prejudice to the defendants. The plaintiffs now want to change the nature of the suit. Earlier, the plaintiffs conceded possession of the defendants over the suit premises. The amendment has been sought belatedly in order to protract the proceeding.



One aspect of the matter has been crystalised on the rival submissions of the parties. The suit was for declaration of title over the suit land and thereafter removal of the defendants from the suit premises and also for a decree of permanent injunction. The defendants took the plea that their possession in the suit premises was on account of agreement to sell entered between the Society and the ancestor of the plaintiffs. The plaintiffs now seek a declaration, by amendment, that the said agreement to sell is forged and fabricated. The relief which was sought in the suit is, therefore, not going to change. It has been submitted on behalf of the defendants-respondents that an admission which was made with regard to the possession of the suit premises by the plaintiffs is sought to be avoided by such amendment. On going through the relevant paragraphs of the petition seeking amendment, in my view, such possession over the suit property of the defendants is not being controverted by the plaintiffs. Certain factual background thereto have been sought to be placed on record. After all, such amendments are permitted to be made in the plaint for resolving the real controversy between the parties. In my view, non-grant thereof shall result in multiplicity of the suit and miscarriage of justice.

The writ application is allowed. The order dated 31.8.2007 passed by Sub-Judge-VIII, Siwan in Title Suit No. 51 of

2001 is quashed. The Trial Court shall permit the amendment sought by the plaintiffs on imposition of appropriate cost in favour of the defendants. Mr. Sinha, Counsel for the petitioners has taken a stand that he would not seek recall of all witnesses adduced on behalf of the plaintiffs. Only 2-3 witnesses relevant for the purpose shall be required to be examined/re-examined in the light of amendment without taking much time. The defendants will thereafter examine the witnesses. Recording the aforesaid submission of the Counsel for the petitioners, the writ application is disposed of in the aforesaid terms.

Pankaj/-

(Kishore Kumar Mandal, J)

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