

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13056 of 2011

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Arvind Kumar Singh & Anr

.... Petitioner/s

Versus

Lallan Pratap Singh & Ors

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Dineshwar Mishra, Adv.
Mr. Surendra Mshra, Adv.
Mr. Rohan Priyan Sahay, Adv.
For the Respondent/s : Mr. Yashraj Bardhan, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

10 26-11-2015

Heard learned counsel for the petitioners as well as

learned counsel for respondent nos. 1 to 5.

Petitioners/plaintiffs had initially prayed for declaration of title as well as permanently restraining the defendant from interfering with his possession. Subsequently thereof, a prayer for amendment has been made asking for recovery of possession on the ground that during midst of proceeding, he has been dispossessed. Learned counsel for the respondents submits that after their appearance, pleaded in their W.S. that the land happens to be under their possession and for that a 144 Cr.P.C. proceeding was fought amongst the parties.

From the order impugned, it is evident that prayer of the petitioners has been refused on the basis of a report submitted by a Pleader Commissioner. The amendment is not to be

considered in the background of aforesaid report rather the amendment has to be considered in the background of totality of the event inconsonance with the pleading. Moreover, it happens to be a subsequent event affecting upon proceeding of instant suit which, if not brought up on record, would be barred under Section 34 of the Specific Relief Act.

That being so, the conclusion at by the learned lower court is not consistent with the law. Consequent thereupon, the same is set aside. Petition is allowed. However, subject to cost of Rs.1000/-. Stay is accordingly vacated.

(Aditya Kumar Trivedi, J)

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