

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19039 of 2010

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1. Ram Bahadur Singh S/O Late Birendra Prasad Singh @ Mahatam Singh R/O Vill./P.O.-Rajabhar, P.S.-Majhauria, Distt.-West Champaran.
 2. Vijay Singh S/O Late Birendra Prasad Singh @ Mahatam Singh R/O Vill./P.O.-Rajabhar, P.S.-Majhauria, Distt.-West Champaran.
 3. Rama Kant Singh S/O Late Birendra Prasad Singh @ Mahatam Singh R/O Vill./P.O.-Rajabhar, P.S.-Majhauria, Distt.-West Champaran.
 4. Rakesh Kumar Singh S/O Late Nawal Kishor Singh R/O Vill./P.O.-Rulahi, P.S.-Motihari, Distt.-East Champaran.
 5. Bajanti Devi W/O Ram Babu Singh, D/O Late Birendra Prasad Singh @ Mahatam Singh R/O Vill.-Bishnupur, P.O.-Yasauli, P.S.-Kotawa, Distt.-East Champaran.
 6. Ram Bichari Devi D/O Late Birendra Prasad Singh @ Mahatam Singh R/O Vill.-Bishnupur, P.O.-Yasauli, P.S.-Kotawa, Distt.-East Champaran.

.... Petitioner/s

Versus

1. Sri Naga Prasad S/O Late Jhagaroo Mahto R/O Vill./P.O.-Rajabhar, P.S.-Majhauria, Distt.-West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SHIV KUMAR DWIVEDY

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 04-08-2015

Heard the Counsels for the plaintiffs-petitioners and the defendant-respondent.

The plaintiffs-petitioners filed Title Suit No. 276 of 2006 to declare right, title and interest over Schedule-1 property of the plaintiff and to confirm possession thereover. A further relief was sought that if during the pendency, the plaintiffs were found dispossessed from the suit property then order for recovery of possession be passed in favour of the plaintiffs.



The case of the plaintiffs-petitioners is that the suit land was recorded in the name of Jhoothan Mahto (ancestor of defendant). Roy Mahendra Bahadur and Others were ex-landlords. Intermediary holder of land was Lal Sarai Kothi recorded in Khwheat no. 1 who was receiving rent in respect of the suit land. A Title Suit No. 32 of 1929 was filed and disposed of on 7.5.1930 whereafter Lal Sarai Kothi, the then defendants of the suit sold their share to Bhagat Rai, son of Ramdhani Rai and since then he became landlord of the suit land. Subsequently, Saudagar Singh (father of plaintiff no.1) got the suit land settled by Sada Patta in on 20 Kartik 1343 Fasali (1936) in the name of his son who was then minor. Jhagaroo Mahto (father of the defendant) was not entitled to sell the disputed land even though, to avoid further litigation, the father of plaintiff no. 1 purchased the land from Jhagaroo Mahto. Since then, the land came in peaceful possession of the plaintiffs. Cause of action arose in the month of September, 2006 when an order was passed in Rent Fixation Case No. 100/2004-05 whereafter the defendant became aggressive and started interfering in the possession of the plaintiffs.

In the suit, the plaintiffs filed an application seeking amendment in paragraph nos. 6 and 7 of the plaint. The same was allowed after contest. The amended paragraphs 6 and 7 of the plaint read as under:-

“6. Later on title suit bearing No. 32 of 1929 was fought among the ex-landlord and it was disposed of on 7.5.1930 and after decree lal Saraiya Kothi i.e. defendant No. 1 to 3 sold their share to Bhagat Rai, son of Ramdhani Rai of village-Rulahi in 1939 and since then he became the land lord of the suit land. Thereafter Saudagar Singh father of your humble plaintiff No. 1 got the suit land settled through Sada patta by Bhagat Rai dated 20 kartik 1343 Fasali (1936) in the name of his son who was minor at that time and granted rent receipt.

7. Though he was not legally entitled for the same in order to avoid further litigation the father of plaintiff No. 1 became ready to purchase it from him also.”

Be it noted that prior to the amendment sought by the plaintiff in paragraphs 6 and 7, the defendant had appeared and filed written statement. However, no additional written statement was filed after the amendment was allowed by the Court. It appears, subsequently, the plaintiffs filed another application seeking amendment in the plaint by deleting the pleadings made in paragraph nos. 10, 13 and 14 which was contested by the defendant by filing rejoinder. The learned Trial Court by order dated 28.8.2010 rejected the said application of the plaintiffs-petitioners holding that such amendment would prejudice the case of the defendant and may cause irreparable injury. In the opinion of the Trial Court, such amendment in the plaint was not required.

Counsel for the plaintiffs-petitioners submits that the case put up by the plaintiffs would not change if the pleadings made in those



paragraphs are deleted. In fact, the plaintiffs-petitioners are not seeking introduction of new facts by seeking deletion of certain paragraphs of the plaint by way of amendment which necessitated owing to amendment in the plaint sought and allowed by the Court. He has highlighted the ambit and scope of Order VI Rule 17 of the Code of Civil Procedure (for short 'the Code') in order to submit that such amendment, in the interest of justice, is required to be allowed by the Court. The apprehension of the Court that the deletion of those paragraphs which are compatible with the case of the plaintiffs after amendment in paragraph nos. 6 and 7 thereof is not going to cause any prejudice to the defendant.

Counsel for the respondent-defendant opposed the prayer and contended that by allowing such amendment in the plaint permitting the plaintiffs-petitioners to delete those paragraphs from the plaint, a serious prejudice shall be caused to the defendant as new case shall be introduced. There has been perceivable delay in seeking such amendment by the plaintiffs which merits not to be allowed.

On a consideration of rival submissions of the parties, in my view, the contention of the respondent-defendant does not appear sound. What the plaintiffs want is mere deletion of three paragraphs of the plaint and not introduction of new facts/pleadings. How the same can change the nature of the suit? The Code envisages such

amendment should invariably be granted, of course subject to certain limitations, which, in the facts and circumstances of the present case, is not present as new facts are not sought to be incorporated in the plaint. I have gone through the case of the plaintiffs vis-à-vis the defendant as also the amendment which was sought by the plaintiffs in the plaint and allowed by the Court in paragraphs 6 and 7 of the plaint. In my view, the ends of justice shall be sub-served if the application filed by the plaintiffs-petitioners seeking deletion of three paragraphs from the plaint is allowed.

Repeated applications seeking amendment in the plaint has, of course, caused delay in disposal of the suit besides causing inconvenience to the defendant. The inconvenience which has been caused to the defendant(s) can be compensated by directing the plaintiffs to pay a cost in the sum of Rs. 1,000/- to the defendant.

In the aforesaid terms, the application is allowed. The order dated 28.8.2010 passed by learned Sub-Judge-IV in Title Suit No. 276 of 2006 is quashed and set aside.

(Kishore Kumar Mandal, J)

Pankaj/-

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