

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19509 of 2012

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1. RAMASHRAY MISHRA, SON OF LATE NARSINGH MISHRA,
RESIDENT OF VILLAGE- KAITHI, P.O.- KAITHI, P.S. BRAHAMPUR,
DISTRICT- BUXAR

.... PETITIONER/S

VERSUS

1. BRAHMESHWAR MISHRA, SON OF LATE RAM NARESH
MISHRA, RESIDENT OF VILLAGE- KAITHI, P.O.- KAITHI, P.S.
BRAHAMPUR, DISTRICT- BUXAR

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nawnit Kumar Tiwary-Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 18-12-2015

Heard learned counsel for the petitioner.

Petitioner is aggrieved by an order dated 07.04.2012
whereby and whereunder prayer of the petitioner with regard to
proposed amendment in the plaint has been rejected.

Copy of the proposed amendment has been made
Annexure-3.

Before dealing with the same, it looks pertinent to
incorporate the relief as it stood since before as is evident from the
plaint (Annexure-1).

*“25. That under circumstances mentioned above your plaintiff
is entitle for following reliefs.*

RELIEFS

1. A survey knowing pleading commissioner be appointed to
measure and report as to whether the area of your plaintiffs R/S Plot

No.2076 is complete area of 06 Dis. According to R/S Khatian published name of your plaintiff and his brother or not.

2. *Secondly if the area of plot No.2076 is not found excess than the area mentioned in R/S Khatian then a boundry wall be constructed on northern boundry of disputed land which prove to be demarketing wall in between plaintiff" plot no.2076 and defendants land of his plot No.2075.*

3. *Thirdly the defendant may kindly be restrained through order of ad-interim injunction from going upon the disputed land and creating any trouble in peaceful possession of your plaintiff or changing the nature of disputed land till the disposal of this suit.*

4. *Fourthly the cost of the suit be paid to plaintiff by defendant.*

5. *Fifthly the plaintiff be given any other relief or reliefs for which he is entitled to.*

The proposed amendment with regard to Relief No.1 has been incorporated as "like wise in relief para 1 and 2 the word "Map" after the word R/S be amended after deleting the word Khatian" and further, a new relief has been sought for under para 3A "Let the title of the plaintiff be declared and the possession be confirmed and in case of dispossession, the delivery of possession be given to the plaintiff over the suit land of the plaintiff". Suit has been filed in the year 2005. It is evident from Para-10 of the plaint that during course of revisional survey, the parties have fought and further, Case No.391 of 1971 was filed against the plaintiff/petitioner under Section 106 of the B. T. Act and same was dismissed for default vide order dated 03.06.1973.

It has been submitted on behalf of petitioner that in



R/S Khatian, the total area of the disputed land belonging to the petitioner bearing R/S Plot No.2076 has got 06 decimal while in the revisional survey map, it has been shown as 07 decimal. It has also been submitted that area shown in the R/S Map will prevail upon the R/S Khatian and on account thereof, instant suit has been filed as, the defendant in the background of wrong entry made in the R/S Khatian is bent upon to encroach the land.

So far other reliefs are concerned, that certainly happens to be formal in nature and without appearance of opposite party/ respondent. The aforesaid event could be disposed of.

However, with regard to amendment in relief no.1 as well as addition of relief no.3A are concerned, taking into account the nature of the suit, the relief so sought for and further, having deficient on the score that in proposed amendment relating to relief no.1, though R/S Map has been sought for to be added deleting the R/S Khatian. However, area has not been shown and for that, learned counsel for the petitioner has submitted that those things could be inferred in the background of other amendment, so proposed. With regard to insertion of new Para as 3A under the relief, none of the Paragraphs of the plaint as originally stood nor by way of proposed amendment did justify the same. Because of the fact that the dispute amongst the parties are coming since long

and further, having the suit filed in the year 2005, coupled with the fact that during intermediary period, there happens to be absence of story of dispossession, then in that event, the possession of the defendant, in case so found, will be barred by law of limitation.

Consequent thereupon, the proposed amendment relating to relief nos.1 and 2 in consonance with new relief under Paragraph-3A are rejected.

Accordingly, petition is allowed subject to aforesaid modification in the order impugned.

(Aditya Kumar Trivedi, J)

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