

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.245 of 2016

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1. Smt. Mina Devi, wife of Sri Indra Narayan Gupta
2. Abhishek Kumar, son of sri Indra Narayan Gupta
Both resident of Mohalla – Milki tola Baraman Toli Gopali Chowk, P.S. Arrah (Town), District Bhojpur

..... Plaintiffs Petitioners

Versus

1. The State of Bihar, through the Collector, Bhojpur
2. District Education Officer, Bhojpur
3. Amir Chand Agarwal Girls High School, Jail Road Arrah, P.S. Arrah (Town), District Bhojpur through its Secretary

..... Defendants Respondents

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Appearance :

For the Appellant/s : Mr. Ramanuj Tiwary
For the Respondent/s : Mr. Anil Kumar Tiwary, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 16-06-2016 Heard Mr. Sinha, learned counsel appearing for the petitioners.

Questioning the legal acceptability of the impugned order, by which the prayer for amendment in the plaint has been turned down, the plaintiffs have filed this application under Article 227 of the Constitution of India.

The suit has been filed by the plaintiffs in the year 2003 for declaration of title and for injunction restraining the defendants from making any construction over the land described in the plaint. The defendants appeared and filed their written statement contesting the case of the plaintiffs. The hearing commenced and ten witnesses on behalf of the plaintiffs have been examined and at that stage the plaintiffs filed the petition for amendment (Annexure 4) seeking to



introduce certain facts in the plaint. The learned court below has come to the conclusion that the plaintiffs have not acted with due diligence in spite of presence of opportunity for preferring the amendment. It has also been found that the plaintiffs wants to delay the disposal of the suit in spite of the direction for disposal in that regard by the learned District Judge.

Mr. Sinha, learned Counsel for the petitioners, has submitted that the facts sought to be introduced by way of amendment is clarificatory in nature and do not change the nature of the suit. It has, however, been submitted that the plaintiffs came to know about the absence of those facts in the plaint only after it was found that it was due to mistake of typist and the Junior Counsel that those facts could not be included. It has, therefore, been canvassed that the amendment as prayed is necessary for adjudication of the dispute between the parties to the suit.

After considering the submission and perusal of the impugned order it is manifest that the amendment has been sought at the advance stage of the suit where ten witnesses on behalf of the plaintiffs have already been examined. It also transpires from the impugned order that earlier to this amendment the plaintiffs had prayed for amendment in the year 2006 as well as on 6.8.2015. This Court finds that the court below has not committed any illegality or material irregularity in coming to the conclusion that the plaintiffs have not acted with due diligence in preferring the amendment at the stage when ten witnesses have been examined on behalf of the plaintiffs. This Court, therefore is not inclined to grant the relief as

prayed.

This application is accordingly dismissed. However, the plaintiffs shall have the liberty to raise their objections if such occasion arises in accordance with the provisions of the CPC.

(V. Nath, J.)

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