

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.697 of 2016

=====

Saraswati Devi & Ors

.... Appellant/s

Versus

Nawal Kishore Prasad Shrivastava & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Gajendra Kumar Jha

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 19-10-2016

Heard learned counsel for the petitioners.

2. Perused the impugned order dated 20.04.2016 passed by learned Munsif-I, Darbhanga in Title Suit No.14 of 2006 whereby the learned court below has allowed the amendment application filed by the plaintiff-respondent.

3. It appears that the suit was filed for declaration of possession of the plaintiff. The defendants filed written statement denying the title of the plaintiff. During pendency of the suit the original plaintiff died and the legal representatives were substituted. Subsequently they filed amendment application for amendment in the relief portion wherein they claimed that their title may be declared and recovery of possession may be granted over part of the suit land. The court below by the impugned order has allowed the same.

4. From perusal of the amendment application, it

appears that the plaintiffs alleged that during pendency of the suit the defendants-petitioners dispossessed the plaintiffs by constructing *chhajja* etc.

5. Learned counsel for the petitioners submitted that the evidence of the plaintiffs has been closed and at this stage the court has no jurisdiction to allow amendment application in view of the proviso to Order 6 Rule 17 of the Code of Civil Procedure. Learned counsel further submitted that even if amendment has been allowed, cost should have been imposed by the court below as the original plaintiff was not diligent in prosecuting his case. In support of his submission the learned counsel relied upon **A.I.R. 2008 Supreme Court 1147 (Usha Devi Vs. Rijwan Ahmad and Ors)**.

6. So far the decision relied upon by learned counsel for the petitioners is concerned, there is no dispute with regard to settled proposition of law. Here, in the present case, it may be mentioned that only evidence of the plaintiffs has been closed. The evidence of petitioners is yet to begin. The plaintiffs are only praying for declaration of title and recovery of possession on the ground that subsequent event has taken place. The plaintiffs in the present case are not praying for amendment in the facts of the case. They are not introducing a new fact but the fact alleged

seeking amendment is the fact which is subsequent event. It is settled principles of law that the court should take subsequent event for just decision of the controversies. Admittedly the defendants are denying the title of the plaintiffs and, therefore, the plaintiffs prayed for declaration of title and because during the pendency of the suit according to the plaintiffs, the defendants have dispossessed them, they claimed for recovery of possession. In such view of the matter, in my opinion, no case for interference in supervisory jurisdiction is made out.

7. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Harish/-

U			
---	--	--	--