

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.618 of 2016**

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Harihar Rai @ Harihar Singh

.... Appellant/s

Versus

Nathu Sah

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Kant

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

3 25-10-2016

Heard learned counsel, Mr. Chandra Kant, appearing
for the petitioner.

2. Perused the order dated 25.05.2016 passed by the
Additional Munsif- 6th, Siwan in Eviction Suit No. 02 of 2001,
whereby the learned court below rejected the amendment
application filed by the plaintiff-petitioner praying for converting
the eviction suit to a regular title suit.

3. It appears that in spite of valid service of notice,
nobody appeared on behalf of the defendant-respondent.

4. It appears that the plaintiff-petitioner filed the
aforesaid eviction suit for eviction of the defendant-respondent on
the ground of default and personal necessity. The defendant
appeared and filed contesting written statement denying the
relationship of landlord and tenant and claimed title on himself.
Thereafter witnesses were examined by the plaintiff and also
application was filed by the plaintiff praying for conversion of the

eviction suit to a regular title suit. The court below rejected the amendment application on the ground that if the amendment is allowed, it will change the nature of the suit i.e. from eviction suit to a regular title suit.

5. In this matter reference may be made to a decision of this Court in the case of **Balaram Medical Hall Vs. Rajendra Prasad** reported in **2007 (3) PLJR 778**. This Court, in the aforesaid case, has held at paragraph-32 that an eviction suit can be permitted to be converted into a title suit so that all matters in controversy between all concerned parties may be settled once and for all.

6. From perusal of the impugned order, it appears that the court below has not considered the settled principle of law as referred to above and has rejected the application only on technical ground that it will change the nature of the suit. Therefore, in my opinion, the order passed by the court below is contrary to settled principle of law. As such, it is not sustainable in the eye of law. Accordingly, this civil miscellaneous application is allowed. The impugned order is, hereby, set aside and the amendment application filed by the plaintiff for amendment of the plaint i.e for converting the eviction suit to a title suit is hereby allowed.

Brajesh/-

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(Mungeshwar Sahoo, J)