

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1020 of 2016**

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Vijay Singh @ Vijay Kumar Singh, Son of Late Achyuta Nand Singh,
resident of Village- Harnathpur, P.S. Pakri Dayal P.O. Harnathpur, District-
East Champaran (Motihari).

.... Defendant-Petitioner.

Versus

1. Uttim Lal Sah.
2. Munib Sah.

Both sons of Late Ram Narayan Sah, resident of Village-Harnathpur,
P.S. Pakri Dayal, P.S. Harnathpur, District- East Champaran (Motihari)

.... Plaintiff-Respondents.

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Appearance :

For the Appellant : Mr. Shashi Shekhar Dwivedi, Senior Advocate.

For the Respondents : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

2 08-11-2016 Heard learned Senior Counsel Mr. Shashi Shekhar
Dwivedi appearing on behalf of the petitioner.

2. Perused the impugned order dated 11.07.2016 passed
by the learned Munsif, Sadar, Motihari, in Title Suit No.
30/2013/Title Suit No. 174/2015, whereby the learned court below
has allowed the amendment application filed by the
plaintiff/respondent.

3. Learned Senior Counsel appearing on behalf of the
petitioner submitted that incorrect facts were pleaded in para 8 of
the plaint and by way of amendment certain supplementary facts
are sought to be brought on record in support of incorrect facts.
He further submitted three witnesses have been examined by the

plaintiff. Therefore, the trial has commenced, but the court below without considering this aspect of the matter has allowed the amendment application.

4. So far the first submission regarding incorrect statement made in paragraph 8 of the plaint and further supplementary fact in support of the fact stated in paragraph 8 is concerned, it may be stated that the Hon'ble Supreme Court in case of (2006) 4 Supreme Court cases 385 had held that while considering whether an application for amendment should or should not be allowed, the court should not go into correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This view has again been reiterated in (2008) 17 Supreme Court Cases 671.

5. So far proviso of Order 6 Rule 17 CPC is concerned, learned Senior Counsel for the petitioner submitted that now three witnesses have only been examined by the plaintiff and the defendants are yet to begin their evidence. Therefore, in view of decision of (2008) 14 Supreme Court cases 364, there is no question of prejudice to the defendant petitioner arise as they have

got opportunity to file additional written statement and adduce evidence in rebuttal of the plaintiff case.

7. The Hon'ble Supreme Court in (2009) 10 Supreme Court cases 84 and in decision reported in (2016) Supreme Court Cases 332 had held that all amendments ought to be allowed if it will not be prejudicial to the other side.

8. In view of above facts and circumstances of the case, I do not find any reason to interfere with the order impugned. Accordingly, this Civil Miscellaneous Application is dismissed.

(Mungeshwar Sahoo, J)

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