

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.799 of 2016**

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Om Prakash @ Om Prakash Sarraf

.... Appellant/s

Versus

Lallan Prasad

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mahasweta Chatterjee

For the Respondent/s : Mr.

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

3 20-10-2016

Heard learned counsel Ms. Mahasweta Chatterjee for
the petitioner.

Perused the impugned order dated 11.05.2016 passed
by learned Munsif, Buxar in Eviction Suit No.01 of 2013 whereby
the learned court below has allowed the amendment application
filed by the plaintiff-respondent.

Admittedly the suit is on the ground of personal
necessity only and the special procedure provided under Section
14 of the Bihar Building (Lease, Rent & Eviction) Control Act is
being applied. The plaintiff filed application for amendment in the
plaint to the effect that he has obtained title by the decree passed
in Title Suit No.39 of 1970 which was disposed of on
compromise. The plaintiff also sought amendment for introducing
the facts detailing as to when the rents were enhanced. The court

below has allowed this amendment application.

Learned counsel for the petitioner submitted that earlier same type of amendment was rejected by the trial court by order dated 25.07.2014 but subsequently by this impugned order same type of amendment has been allowed.

At the time of hearing of this civil miscellaneous application copy of the amendment filed earlier was produced before this Court. From perusal of the application for amendment, it appears that in that amendment application the plaintiff prayed for declaration of title with respect to the property. The court below by order dated 25.07.2014 held that in eviction suit the question of title cannot be decided and amendment was rejected. Now, amendment has been prayed for by plaintiff is to the effect that he has already got title because of compromise decree passed in Title Suit No.39 of 1970. In such circumstances, it cannot be said that the earlier order will operate as *res judicata*. Admittedly evidence has not yet started and the special procedure is being followed and, therefore, there is no question of prejudice to the defendant-petitioner arises as his defence is that there is no relationship of landlord and tenant between the parties.

In view of the above factual position, I do not find any

reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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