

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8320 of 2014

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Hari Nandan Rai S/o Late Kali Rai @ Kail Rai Resident of Village-
Bakhara, P.S. Motipur, District- Muzaffarpur

.... Petitioner/s

Versus

1. Shri Rameshwar Rai S/o Late Bujhawan Rai
2. Smt. Darbi Devi @ Manju Devi Wife of Shri Rameshwar Rai
3. Shri Birendra Rai
4. Shri Surendra Rai
5. Shri Akindra Rai Respondent no. 3 to 5 Sons of Rameshwar Rai All
Resident of Village- Motipur, Post AND P.S. Motipur, Distt.-
Muzaffarpur
6. Ram Bilash Rai S/o Late Mohan Rai Resident of Village- Motipur, Post
and P.S. Motipur, Distt.- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 29-02-2016 Heard the learned counsel appearing on behalf of the
petitioner.

The assail in the present application under Article
227 of the Constitution of India is to the impugned order by which
the learned court below has allowed the prayer for amendment in
the plaint as made by the plaintiffs.

From the perusal of the copy of the plaint as annexed
with this application, it is apparent that the plaintiffs have filed the



suit for declaration of title and confirmation of possession and in alternative for recovery of possession if found dispossessed, during the pendency of the suit. The amendment petition was filed by the plaintiffs alleging that the defendant has dispossessed them from the suit property on 20.08.2013 and the prayer, therefore, was made for deleting the relief of confirmation of possession and add the relief for recovery of possession. The defendant, in his rejoinder, has contested the assertion of the plaintiffs regarding dispossession and has claimed that the defendant has been in possession over the suit property continuously since filing of the suit. The learned court below, by the impugned order, has come to the conclusion that the plaintiffs have prayed for amendment in view of subsequent event and has allowed the prayer for amendment granting opportunity to the defendant to file additional written statement, if so advised.

The learned counsel for the petitioner has submitted that by the proposed amendment the nature of the suit would change. It has also been submitted that the prayer for amendment has been made at the belated stage.

After considering the submissions and the materials of record, it is manifest that the initial prayer in the suit by the plaintiffs was for declaration of title and confirmation of

possession and the alternative prayer was for recovery of possession in case of dispossession during the pendency of the suit. The amendment petition has been filed by the plaintiffs with allegation that the defendant has dispossessed the plaintiffs from the suit land on 20.08.2013 and as such the prayer for recovery of possession has been prayed to be added by way of relief after deleting the prayer for confirmation of possession. As the relief relating to possession was already there in the suit by way of confirmation of possession or alternatively by way of recovery of possession in case of dispossession, the addition of the relief for recovery of possession on the premises that the defendant has dispossessed the plaintiffs on 20.08.2013 after filing of the suit will certainly not change nature or scope of the suit. The submission of the learned counsel for the petitioner in this regard is clearly misconceived. It further appears that the learned court below has also allowed the defendant to file additional written statement if so advised. As such, this Court is not inclined to interfere with the impugned order.

The writ application is, accordingly dismissed with observations that the learned court below shall dispose of the suit expeditiously.

Devendra/-

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(V. Nath, J)