

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8725 of 2014

=====

1. Upendra Nath Verma
2. Vaidyanath Kumar both sons of Shri Ram Chandra Singh residents of village -
Garhua, Post Office - Jarhua, Police Station - Hajipur, District - Vaishali

.... Petitioner/s

Versus

1. Smt. Asha Kumari wife of Shri Vinay Kumar Himanshu
2. Smt. Rekha Kumari wife of Shri Vijay Kumar
3. Shri Mukul Kumar Murali son of Late Ram Ratan Prasad Rawat resident of
village - Kazipur, Post Office - Rasalpura, Police Station - Doriganj, District -
Saran.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Najmul Hoda & Mr. Alok Kumar Alok
For the Respondent/s : Mr. Devendra Kumar Sinha, Sr. Advocate &
Mr. Abhinay Raj.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-06-2016

Heard Mr. Najmul Hoda, learned counsel for the
petitioners.

In the present writ application filed under Article
227 of the Constitution of India, the legal acceptability of the
impugned order by which amendment of the plaint has been rejected
by the court below, has been questioned.

Learned counsel for the petitioners has submitted
that if the amendment is not allowed, the suit would become
infructuous or cannot be decided.

It has been canvassed that the plaintiffs-petitioners
are not in possession of the suit land as they have been dispossessed
during the pendency of the suit and, therefore, the learned court below

ought to have allowed the prayer for amendment incorporating relief for the recovery of possession.

After considering the submissions and perusing the materials on record including the impugned order, it appears that the plaintiffs have filed the suit for declaration of title and it also appears that at one stage the plaintiffs were granted injunction restraining the defendants from interfering in the possession of the plaintiffs over the suit land. The matter of injunction ultimately came to this Court which declined to allow the prayer of the plaintiffs for injunction holding that the plaintiffs were not in possession of the suit land. It further transpires from the impugned order that the plaintiffs had filed a petition for amendment at an early stage on 11.06.2008 where it was stated that the defendants had dispossessed the plaintiffs from the suit land on 01.05.2008. However, the said amendment petition was not pressed and, accordingly, the same was rejected on 18.12.2008. The plaintiffs did not take any step thereafter. However, the plaintiffs again filed a petition on 19.08.2013 after expiry of nearly five years stating therein that they have now been dispossessed from the suit land on 15.05.2013 by the defendants and on that basis sought for amendment in the plaint for incorporating the relief for recovery of possession.

The learned court below has taken note of the shifting and divergent stand of the plaintiffs on the issue of his

dispossession and has also taken into notice that the prayer for injunction was turned down on the ground that the plaintiffs were not in possession of the suit, before turning down the prayer for amendment in the plaint as made.

During the course of argument, learned counsel for the petitioners could not point out any averment in the amendment petition by the plaintiffs explaining their stand regarding dispossession on 05.01.2008 as made in the earlier amendment petition and the learned counsel for the petitioners also could not point out any such explanation in the present writ application before this Court.

Considering the aforesaid facts and the reasons assigned by the learned court below in the impugned order, this Court is not inclined to interfere with the impugned order. However, the plaintiffs-petitioners are set at liberty to raise the objection in appeal, if such an occasion arises, in accordance with law under the provisions of the Code of Civil Procedure.

With this observation, this application is dismissed.

(V. Nath, J)

Amin/-

U			
---	--	--	--