

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15668 of 2014

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Sita Ram Mistri son of late Mahavir Mistri resident of Mohalla - Harischandra
Talab, Nawada, P.O./P.S./Distt. - Nawada.

.... Petitioner/s

Versus

Vidya Devi wife of late Narayan Sao resident of Mohalla - Purani Jail Road,
Nawada, P.O./P.S./Distt. - Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sidhendra Narayan Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-10-2016

Heard Mr. Sidhendra Narayan Singh, learned counsel for
the petitioner.

By the impugned order, the learned appellate court below
has rejected the prayer for amendment in the plaint praying for
addition of new facts at the appellate stage.

The judgment passed by the trial court in the suit has been
annexed with this application. From the perusal of the said judgment,
it appears that the plaintiff filed the suit claiming relief for declaration
of title over the suit land. After dismissal of the suit, the appeal was
filed by the plaintiff-petitioner and at that stage prayer for amendment
has been made which has been turned down by the impugned order.

Mr. Singh, learned counsel for the petitioner has



submitted that the matter was not properly conducted on behalf of the petitioner in the learned court below and, therefore, the said relief could not be prayed on behalf of the petitioner. Learned counsel has further pointed out that the issue nos. 8 and 9 in the suit relate to the title and possession of the plaintiff over the suit land. It has also been submitted that the plaintiff-appellant-petitioner is not intending to lead any evidence after the amendments as prayed is allowed. Learned counsel has canvassed that the learned court below has not properly appreciated the matter and has wrongly passed the impugned order.

After considering the submissions and perusal of the impugned order as well as judgment under appeal before the appellate court below as annexed with the application, it is evident that the suit was filed only for declaration of title. It also appears from the judgment passed in the suit that the plaintiff's witnesses were also examined. It further appears from the perusal of the judgment that though the issue nos. 8 and 9 comprise the point of possession but no specific finding on the point of possession has been shown to be recorded by the trial court. In this view of the matter, this Court is not inclined to align with the submission on behalf of the petitioner that the relief for confirmation of possession being the consequential relief could have been allowed to be incorporated in view of the stand on behalf of the petitioner that no evidence in that regard is to be led on behalf of the



petitioner. The fact cannot be ignored that the defendant-respondent will have to be given opportunity to lead evidence on the issue of possession after incorporating the said relief by way of amendment. This Court, therefore, is not inclined to interfere in the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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