

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11658 of 2015

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Shakhi Chand Mallik & Anr

.... Petitioner/s

Versus

Phulia Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Narayan Mahto

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 02-05-2016

Heard learned counsel, Mr. R.N. Mahto, appearing
for the petitioners.

2. By the order dated 02.04.2015, the learned 1st Additional District Judge, Begusarai in M.T.A. No. 12 of 2000/12 of 2014 rejected the application filed by the defendants-appellants-petitioners under Order 41 Rule 27 C.P.C. and also application under Order 6 Rule 17 C.P.C. recording finding that the *Parcha*, which is sought to be adduced as additional evidence, was within the knowledge of the appellants-petitioners but they did not file the same during the course of the trial. No amendment application was filed seeking amendment of the written statement bringing the fact of granting *Basgit Parcha* in favour of the petitioners under the Bihar Privileged Persons Homestead Tenancy Act.

3. It is admitted fact that the plaintiffs-respondents filed the suit for declaration of title and recovery of possession. The



petitioners contested the suit on the ground that they are in possession of the property since more than 50 years and they have acquired title. The trial court on the basis of the evidences and materials, decreed the plaintiffs-defendants' suit. Against that judgment and decree, the defendants-petitioners filed title appeal before the lower appellate court and in that title appeal, application under Order 41 Rule 27 C.P.C. and amendment application was filed. The court below considered the facts of the case and held that none of the clauses of Order 41 Rule 27 is applicable in the present case, and, accordingly, rejected the application under Order 41 Rule 17 C.P.C. So far the amendment application is concerned, the court below also rejected the same on the ground that in the appeal such a new fact is sought to be brought on by way of amendment.

4. Since the plaintiffs have filed the suit for declaration of title and recovery of possession, which has been decreed by the trial court, the *Parcha*, which has been granted during the pendency of the suit, will have no bearing on the merits of the judgment and decree passed by the trial court. The court below, therefore, rightly exercised the discretionary jurisdiction by rejecting the application. In my opinion, the amendment sought for and the *Parcha* sought to be adduced are not at all relevant for the

decision of the real question in controversy between the parties. I, therefore, find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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