

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.546 of 2016**

=====

Md. Salimuddin Ansari & Ors

.... Appellant/s

Versus

Sk. Nasaruddin & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Vijay Shankar Shrivastava, Advocate

For the Respondent/s : Mr. Pravin Kumar, Advocate

=====

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

ORAL ORDER

3 24-10-2016 Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. Perused the impugned order dated 19.05.2016 passed
by the learned 10th Additional Munsif, Motihari, East Champaran
in T.S. No. 24 of 2002. The learned court below rejected the
amendment application filed by the plaintiffs-petitioners on the
ground that if at this stage i.e. at the stage of argument,
amendment is allowed then, it will prejudice the defendants-
respondents.

3. Admittedly, according to learned counsel for the
respondents, the suit has been instituted on 23.01.2002. Therefore,
the proviso to Order 6 Rule 17 C.P.C. will not apply in the present
case as the amendment came into force from 1st July, 2002. So far
allowing the amendment is concerned, it may be mentioned here
that in the plaint, which is annexure-1 to this civil miscellaneous



application, it is apparent that the plaintiffs have clearly mentioned that the defendants have illegally dispossessed the plaintiffs and in the prayer portion also the plaintiffs prayed for declaration that the defendants' possession be declared as illegal. However, by mistake, no prayer has been made for recovery of possession. The plaintiffs are not praying addition of new fact. They prayed for recovery of possession on the facts already pleaded in the plaint and evidence produced on the basis of the pleading.

4. The Hon'ble Supreme Court in the case of ***Revajeetu Builders Vs. Naraian Swami*** reported in ***2009 (10) SCC 84*** has held that the Courts have very wide discretion in the matter of amendment. The first condition, which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real questions in controversy. The second contention is potentiality of prejudice or injustice, which is likely to be caused to the other side should be considered. All amendments which are bonafide, legal must be allowed by the Court. In the present case, there is no question of prejudice to the defendants-respondents arises because there is already pleading that the defendants are in possession of the suit premises and prayer has been made that there possession is illegal.

5. In such circumstances, the amendment sought for is essential for determination of the real controversies between the parties. If amendment is not allowed then it will lead to multiplicity of proceedings because if the suit is decreed then the plaintiffs have to institute another suit for recovery of possession. It may be mentioned here that the Hon'ble Supreme Court in a judgment reported in **2016 (1) SCC 332** has reiterated the same view of the Hon'ble Supreme Court in the case of **Revajeetu Builders** (supra). In my opinion the court below has wrongly refused to exercise the jurisdiction vested in it by law and thereby occasioned failure of justice.

6. In the result, this civil miscellaneous application is allowed. The impugned order is set aside. The amendment application filed by the plaintiffs-petitioners is thus, allowed.

brajesh/-

U			
---	--	--	--

(Mungeshwar Sahoo, J)