

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17580 of 2015

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Ajay Kumar Chaurasia

.... Petitioner

Versus

Sanjay Kumar Chaurasia

.... Respondent

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Appearance :

For the Petitioner : Mr. S.S. Dvivedi, Senior Advocate.

For the Respondent : Mr. Jitendra Kishore Verma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. ORDER

5 17-08-2016

I have already heard the learned counsels for both the parties.

2. This is an application under Article 227 of the Constitution of India filed by the plaintiff-petitioner for setting aside the order dated 01.10.2015 passed by Subordinate Judge-XIV, Motihari (East Champaran) in Eviction Suit No.07 of 2009 whereby the court below rejected the amendment application filed by the plaintiff-petitioner.

3. The brief fact may be stated that the plaintiff-petitioner filed eviction suit on the ground of personal necessity and defaulter under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982. The defendant-respondent filed contesting written statement denying the relationship of landlord and tenant between the parties. Thereafter issues were framed and parties adduced evidences in support of their respective cases. At the



argument stage amendment application was filed by the plaintiff-petitioner praying for amendment in the plaint and sought to add a separate paragraph in the body of the plaint and also sought an alternative relief to the effect that if the court will find that there is no relationship of landlord and tenant between the parties, the court may declare the right, title and interest of the plaintiff and further declare that possession of the defendant over the suit property is illegal, against law and is trespasser, as such, recovery of possession be granted. The court below has rejected this application on the ground that the plaintiff failed to show 'due diligence' as required under proviso to Order 6 Rule 17 CPC.

4. The learned Senior Counsel Mr. S.S. Dvivedi relied upon a decision of this Court, **2007 (3) P.L.J.R. 778 (Balram Medical Hall Vs. Rajendra Prasad & Ors.)** and submitted that the eviction suit can be converted to a regular title suit and the court has the jurisdiction to permit the eviction suit to be converted into a title suit so that all matters in controversy between all concerned parties may be settled once and for all. According to learned Senior Counsel, the petitioner is ready to pay ad-valorem court fee on the market value of the suit property. If amendment is refused then it will lead to multiplicity of proceeding. Therefore, to cut short the litigation the court should



have allowed the amendment application. Further both the parties are not disputing the title of each other, therefore, if amendment is allowed the plaintiff will not adduce any further evidence. It is for the defendant to choose as to whether he will further cross-examine or shall produce further evidences or not. The learned Senior Counsel further relied upon the decision of this Court, **1999 (2) PLJR 148 (Maheshwar Prasad Sharma Vs. Shobha Devi)** and submitted that where complicated questions of title arises, the court may ask the plaintiff to seek relief in a properly constituted suit or may convert the suit into a regular title suit and decide the question of title on payment of proper court fee and in an appropriate case grant the plaintiff the decree of eviction on the basis of title under Order 7 Rule 7 CPC.

5. On the other hand, learned counsel Mr. Verma submitted that the decision relied upon by the petitioner is not applicable in the present case as in the said decision the suit was of the year 1987. Proviso to Order 6 Rule 17 CPC was not available in that case, therefore, it was not considered in that decision. The learned counsel further submitted that the scheme of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 does not permit alternative relief for declaration of title and, therefore, in an eviction suit no amendment for alternative relief

for declaration of title that too after closure of evidence of both the parties and at the stage of argument can be allowed. In support of his contention he relied upon the case of **Tribhuvanshankar Vs. Amrutlal, (2014) 2 Supreme Court Cases 788.**

6. Learned counsel Mr. Verma further submitted that unless the court is satisfied in terms of proviso to Order 6 Rule 17 CPC the court will have no jurisdiction to allow amendment. In the present case, when the written statement was filed, the defendant clearly pleaded that there is no relationship of landlord and tenant between the parties but the plaintiff never prayed for conversion of eviction suit to regular suit. The parties went to trial on this question as to whether there is relationship of landlord and tenant or not and whether the ground of default and personal necessity has been proved or not. Now, therefore, at the stage of argument the court below could not have allowed the amendment sought for, as stated above, particularly when no due diligence has been shown and if at this stage amendment is allowed then it will prejudice the defendant-respondent. In support of his contention the learned counsel relied upon **(2008) 14 Supreme Court Cases 364 (Rajkumar Gurawara Vs. K. Sarwagi and Company Private Limited).**



7. It is admitted fact that eviction suit under the special enactment has been filed by the plaintiff-petitioner and evidences have been closed and the eviction suit is at the stage of argument. So far the decision relied upon by the learned Senior Counsel, i.e. **Balram Medical Hall** (supra) is concerned, it appears that in that case the eviction suit was filed in the year 1987 being Eviction Case No.24 of 1987. It further appears that in that case plaintiff's evidences were going on as would be evident from paragraph 5. The court below allowed the application for amendment of the plaint whereby prayer was made for converting the eviction suit into a regular title suit by impleading Anil Kumar Singh and his vendor in the suit for eviction. The fact of that case is different. In that case the prayer was for conversion of eviction suit to regular title suit prior to completion of evidence of the plaintiff.

8. In the present case, at our hand, the plaintiff is not praying for conversion of eviction suit to regular title suit. The plaintiff is praying for alternative relief to the effect that if relationship of landlord and tenant is not found by the court then the court shall grant the decree for recovery of possession after declaring title of the plaintiff.

9. The Hon'ble Supreme Court in **2014 (2) Supreme**

Court Cases 788 at paragraph 30 and 31 has held as follows:

*“30. On a seemly analysis of the principle stated in the aforesaid authorities, it is quite vivid that there is a difference in exercise of jurisdiction when the civil court deals with a lis relating to eviction brought before it under the provisions of Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. Needless to say, this court has cautiously added that if alternative relief is permissible within the ambit of the Act, the position would be different. That apart, the Court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case. We respectfully concur with the aforesaid view and we have no hesitation in holding that the dictum laid down in **Bhagwati Prasad, A.I.R. 1966 Supreme Court 735** and **Bishwanath Agarwalla, (2009) 15 Supreme Court Cases 693** are distinguishable, for in the said cases the suits were filed under the Transfer of Property Act where the equitable relief under Order VII Rule 7 could be granted.”*

*“31. At this juncture, we are obliged to state that it would depend upon the Scheme of the Act whether an alternative relief is permissible under the Act. In **Rajendra Tiwari’s** case the learned Judges, taking into consideration the width of the definition of the “landlord” and “tenant” under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, had expressed the opinion. The dictionary clause under the Act, with which we are concerned herein, uses similar expression. Thus, a limited enquiry pertaining to the status of the parties, i.e., relationship of landlord and tenant could have been undertaken. Once a finding was recorded that there was no relationship of landlord and tenant under the Scheme of the Act, there was no necessity to enter into an enquiry with regard to the title of the plaintiff based on the sale deed or the title of the defendant as put forth by way of assertion of long possession. Similarly, the learned appellate Judge while upholding the finding of the learned trial Judge that*

there was no relationship of landlord and tenant between the parties, there was no warrant to re-appreciate the evidence to overturn any other conclusion. The High Court is justified to the extent that no equitable relief could be granted in a suit instituted under the Act.”

10. It appears that in the case before the Supreme Court the eviction suit was dismissed by the lower appellate court on the ground that no relationship of landlord and tenant was established, as such, the defendant was not liable for eviction under the Act. The Hon Supreme Court at paragraph 33 held that the issue of right, title and interest is definitely open. The plaintiff is required to establish the same in a fresh suit as required under law and the defendant is entitled to resist the same by putting forth all his stand and stance including plea of adverse possession.

11. In view of this decision of the Hon'ble Supreme Court now it becomes abundantly clear that if an alternative relief is permissible under the scheme of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 then only by way of amendment the plaintiff can add alternative relief. The Bihar Building (Lease, Rent & Eviction) Control Act, 1982 is special enactment. The eviction can be granted only if any of the ground mentioned in Section 11 of the said Act is proved by the plaintiff and if there is relationship of landlord and tenant. So far



declaration of title and recovery of possession is concerned, it is under the general law. According to the Hon'ble Supreme Court, there is a difference in exercise of jurisdiction by the Civil Court with these types of cases. Here, within the ambit of Bihar Building (Lease, Rent & Eviction) Control Act, 1982 alternative relief is not permissible.

12. Further in the present case, the parties have already concluded their evidences and the eviction suit is at the stage of argument. Therefore, if now against the scheme and ambit of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 an alternative relief is allowed to be added with respect to title then it will greatly prejudice the defendant-respondent. Further after amendment of Order 6 Rule 17 CPC in the year 2002 proviso has been added which is effective from 01.07.2002. According to this proviso, amendment cannot be allowed unless 'due diligence' mentioned in the proviso is proved by the plaintiff i.e. what prevented the plaintiff from making such amendment prior to commencement of trial. If the Court satisfies with the explanation furnished by the plaintiff then only Court will get the jurisdiction to allow amendment.

13. The Hon'ble Supreme Court in **(2008) 14 Supreme Court Cases 364 (Rajkumar Gurawara Vs. K.**



Sarwagi and Company Private Limited) has held that a pre-trial amendment can be allowed liberally as the opposite party would not be prejudiced because he will have an opportunity of meeting the amendment sought to be made. However, in case of amendments after the commencement of trial particularly after completion of the evidence, the question of prejudice to the opposite party may arise and in such an event, it is incumbent on the part of the court to satisfy the conditions prescribed in proviso to Order 6 Rule 17 CPC. In the present case, there is no explanation at all in the light of proviso to Order 6 Rule 17 CPC. Evidences have already been closed. The eviction suit is at the stage of argument. The scheme of Bihar Building (Lease, Rent & Eviction) Control Act, 1982 does not permit for alternative relief and the petitioner is seeking to add alternative relief claiming title which is against the ambit of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 that too by way of amendment at the stage of argument.

14. The learned Senior Counsel for the petitioner relied on the decision of this Court in the case of **Maheshwar Prasad Sharma Vs. Shobha Devi, 1999 (2) PLJR 148** and submitted that where complicated questions of title arise the Court may ask the plaintiff to convert the suit into a regular title suit. So far this

submission is concerned, it will not be out of place to mention here that in the said decision also nowhere it has been held that the plaintiff can claim alternative relief for declaration of title in an eviction suit. This Court has held that the plaintiff may convert the eviction suit to regular title suit or may institute a fresh suit. In my opinion, therefore, the said decision is not helpful to the petitioner

15. As stated above, in the present cases, the eviction suit is at the stage of argument. In my opinion, the learned court below has rightly rejected the amendment application filed by the present petitioner. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this writ application is hereby dismissed.

(Mungeshwar Sahoo, J)

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