

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3577 of 2013

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Krishna Prasad Singh S/O Late Gopal Jee Singh Resident Of Village-
Jalalpur Khurd, P.O- Bisunpura, P.S- Birauli, District- Gopalganj.

.... Petitioner.

Versus

1. Raghu Nath Pandey S/O Late Chandar Pandey Resident Of Village-
Goriya Kothi Lako Tola, P.O- Goriya Kothi, P.S- Goriya Kothi, District-
Siwan.
2. Upendra Tiwari S/O Late Kedar Nath Tiwari Resident Of Village-
Jalalpur Khurd, P.O- Bisunpura, P.S.- Barauli, District- Gopalganj.
3. Jitendra Tiwari, son of Late Kedar Nath Tiwari, Resident Of Village-
Jalalpur Khurd, P.O- Bisunpura, P.S.- Barauli, District- Gopalganj.
4. Urmila Devi W/O Dhunmun Tiwari Resident Of Village- Jalalpur Khurd,
P.O- Bisunpura, P.S.-Barauli, District- Gopalganj.
5. Dhunmun Tiwari S/O Late Dhruv Tiwari Resident Of Village- Jalalpur
Khurd, P.O- Bisunpura, P.S.- Barauli, District- Gopalganj.

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Dwivedi, Adv.
For the Respondent/s : Mr. S.S.Dwivedi, Sr.Adv.
Mr.Parth Gaurav, Adv.
Mr.Ranjan Kumar Dubey, Adv.
Mr.Rakesh Chandra, Adv.
Mrs. Sangeeta Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 18-01-2016 Heard the learned counsel for the petitioner and

Mr.S.S.Dwivedi, the learned senior counsel for the respondent

nos.1 and 2.

No body has appeared on behalf of the other

respondents.

Calling in question the legal sustainability of the

impugned order, by which the prayer for amendment in the written

statement has been allowed, the petitioner has filed this

application under Article 227 of the Constitution of India.

The facts are not disputed by the learned counsel for the parties that admittedly the suit property originally belonged to the defendant's family or to the recorded tenants through whom the defendant has been claiming his title over the same. But the plaintiffs have claimed their title and possession over the suit land on the plea that the suit property was earlier auction sold and purchased by Suryadeo Kuer who later on has sold the suit property to the plaintiffs. The crucial issue manifestly, therefore, is the legality and validity of the auction sale through which the vendor of the plaintiffs acquired title and possession over the suit property. The contesting defendants in the written statement have denied the claim of the plaintiff and have also denied the legality and validity of the auction sale. By amendment the defendant wants to elaborate those facts relating to the auction sale by introducing more facts in the pleading. The learned court below by the impugned order, after hearing the parties, has allowed the prayer for amendment holding the same to be necessary for complete adjudication of the issues arising between the parties in the suit.

The learned counsel for the petitioner has submitted that the learned court below has failed to consider the facts as

pleaded by the parties and also the fact that the evidence of the plaintiff has already been closed and one witness on behalf of the defendant has already been examined before the prayer for amendment in the written statement has been made. It has been further submitted that the defendant by way of amendment wants to introduce new facts which would change the earlier case set up by the defendants in the written statement.

Mr. Dwivedi, the learned senior counsel appearing for the contesting respondents, however, has submitted that by way of amendment the defendants have not introduced any new case by way of defence and the facts proposed to be introduced by way of amendment are only in the nature of elaboration of the facts already stated in the written statement. It has also been canvassed that the amendment in the written statement are to be liberally allowed and the reliance has been placed on the decision of the Apex Court in the case of ***Sushil Kumar Jain Vs. Manoj Kumar, 2009 (4) PLJR (SC) 69.***

After careful consideration of the matter and perusal of the impugned order, it is manifest that the court below has found the amendment to be necessary for complete adjudication of the issues arising between the parties in the suit. From the perusal of the amendment (Annexure-3 to the



supplementary affidavit on behalf of the petitioner) as well as the written statement annexed therewith it does not appear that by amendment any new defence has been tried to be introduced by the defendant and there appears to be a substance in the submission on behalf of the respondents that the proposed amendments are only clarificatory in nature and by way of elaborating the defence already there in the written statement. In this view of the matter, this Court is not inclined to interdict the impugned order allowing the prayer for amendment.

However, it also appears that the evidence of the plaintiff has been closed and the evidence on behalf of the defendant has started. Though, the Court has allowed the amendment imposing cost upon the defendant but has not granted the opportunity to the plaintiff to lead evidence in rebuttal. The learned counsel for the parties have agreed that such liberty should have been granted to the plaintiff.

The learned senior counsel for the respondent nos. 1 and 2 however has further submitted that the plaintiffs can be granted liberty to lead evidence in rebuttal only with regard to the facts brought by way of amendment otherwise the said liberty may be interpreted as reopening of the evidence of the plaintiff. The learned counsel for the plaintiff-petitioner has raised no objection

in this regard.

In result, this writ application is disposed of with modification in the impugned order to the extent that the plaintiff-petitioner shall have the liberty to lead evidence in rebuttal in accordance with law only to the extent of the facts introduced in the written statement by way of amendment.

(V. Nath, J)

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