

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15567 of 2013

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Rajendra Prasad Singh Son Of Late Gorakh Nath Singh Resident Of
Village- Amarpur Marwariya, P.S.- Arrah Muffassil, Post- Dhamar,
District- Bhojpur, At Present Residing At Mohalla- Pakari, P.S.- Nawada,
Arrah, District- Bhojpur.

.... Petitioner/s

Versus

1. Ramdayal Pandey Son of Late Ramnagina Pandey.
2. Smt. Saraswati Devi Wife Of Shri Ramdayal Pandey both Resident Of
Mohalla- Pakari, P.O.- Pakari, P.S.- Nawada Arrah, District- Bhojpur.
3. Mahendra Prasad Singh Son Of Late Gorakhnath Singh Resident Of
Village- Amarpur Marwariya, P.O.- Dhamar, P.S.- Arrah Muffassil,
District- Bhojpur, At Present Residing At Mohalla- Pakari, P.S.-
Nawada- Arrah, District- Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sachchida Nand Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 21-01-2016 Heard the learned counsel appearing on behalf of the
petitioner.

Aggrieved by the impugned order by which the
amendment in the plaint has been allowed by the learned court
below, the defendant-petitioner has filed this application under
Article 227 of the Constitution of India.

The plaintiff has filed the suit for removal of
encroachment. The defendants appeared and have contested the



claim of the plaintiff. It is the submission of the learned counsel for the petitioner that the plaintiff have prayed for amendment earlier also in the year 2007 which was allowed. It has been next submitted that when the plaintiff was directed to lead evidence, he file a petition for amendment by introducing two more plots i.e. plot nos. 954 and 955 on the ground that those two plots have been left out due to mistake of typing. It transpires from the impugned order that the learned court below has allowed the prayer after hearing the plaintiff alone and has recorded that the defendants did not appear.

The learned counsel for the petitioner has submitted that the impugned order is not sustainable in view of the proviso of Order 6 Rule 17 C.P.C. as the hearing of the suit has already commenced. It has also been submitted that the defendant-petitioner has filed rejoinder to the petition for amendment wherein it has been specifically stated that the two new plots i.e. plot nos. 954 and 955 sought to be added in fact do not belong to the plaintiff. It has been, thus, propounded that the learned court below has not considered the facts and circumstances of the case and has committed error of jurisdiction in allowing the prayer for amendment.

After considering the submissions and the materials

on record, it is manifest that the suit has been filed for removal of encroachment and the fact has not been denied that the adducing of evidence by the plaintiff has not started. The learned court below has allowed the prayer for amendment after imposing cost upon the defendant and simultaneously has also granted opportunity to the defendant for rebuttal. It is well settled by now that the provision of Order 6 Rule 17 C.P.C. is to facilitate the determination of all the issues arising between the parties. The proviso has been introduced only for the purpose of expediting the proceeding of the suit and not to dilute the purpose of the main provision. The suit is still in early stage where the evidence has still not been started. Further the defendant has been granted opportunity to rebut the statements and claim made by the plaintiff by amendment and there appears no likelihood of any prejudice to the defendants. In this view of the matter, this Court is not inclined to interdict the impugned order.

The writ application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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