

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1133 of 2016**

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Bhrigunath Tiwari

.... Appellant/s

Versus

Paras Nath Pathak & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhakar Singh

For the Respondent/s : Mr.

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

2 22-11-2016

Heard learned counsel for the plaintiff-petitioner.

Perused the impugned order dated 14.06.2016 passed by learned Subordinate Judge-VI, Siwan in Title Suit No.268 of 2004.

By this impugned order the court below has decided three applications. The petitioner is aggrieved against part of the order whereby the amendment application filed by the defendant has been allowed and that the applications filed by the petitioner are still pending.

From perusal of the impugned order, it appears that the court below while allowing the amendment application has held that the amendment sought for is based on the report of the survey knowing Pleader Commissioner. The amendment application has been annexed as Annexure-II to this civil miscellaneous application wherein the amendment sought for by the defendant in

the written statement is to the effect that the plaintiff in fact has encroached the land of the defendant-respondent and for that the defendant is going to file a counter claim.

In view of the nature of the order whereby the learned court below has allowed the amendment application now if a counter claim is filed, the plaintiff has the liberty to file written statement as provided under Order 8 Rule 6 A (4) of the Code of Civil Procedure to the counter claim that may be filed. So far the amendment is concerned, at the very initial stage the amendment has been sought for by the defendant, as such there is no question of prejudice to the plaintiff arises nor it occasioned failure of justice. So far pendency of two applications is concerned, admittedly still no order has been passed by the trial court.

Thus, I find no reason to interfere with the impugned order and accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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