

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.598 of 2016**

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Pahari Sah @ Parmeshwar Sah & Anr

.... Appellant/s

Versus

Rameshwar Mahto & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pankaj Kumar Sinha

For the Respondent/s : Mr.

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

ORAL ORDER

2 19-09-2016

Heard learned counsel for the defendants-petitioners.

2. Perused the impugned order dated 18.04.2016 passed by learned Munsif-II, Begusarai in Title Suit No.20 of 1992 whereby the learned court below has allowed the amendment application filed by the plaintiff-respondent.

3. It appears that the plaintiff-respondent filed the suit for declaration that the sale deed executed by defendant 1st set in favour of the plaintiff is legal, valid and for declaration that the *cancelnama* deed is illegal and further for declaration that the sale deed executed by defendant 1st set in favour of defendant 2nd set is illegal and did not confer title to them. The defendants-petitioners filed contesting written statement. According to them, since the consideration amount was not paid by the plaintiff to the defendant 1st set, the sale deed was cancelled and defendant 1st set has executed the sale deed in favour of the defendants-petitioners.

4. Issues were settled and the plaintiff started adducing evidence. At this stage the amendment application was filed by the plaintiff praying for amendment in the plaint. The court below by the impugned order has allowed the said amendment application recording a finding that the amendments sought for are formal and do not change the nature of the suit.

5. The learned counsel for the petitioners submitted that after such a long period this amendment application has been filed and by amendment now the plaintiff is setting off a new case to the effect that the plaintiff was in possession of the suit property and the defendant 2nd set had dispossessed the plaintiffs, which was not the case pleaded in the plaint. In such circumstances the court below could not have allowed the amendment application.

6. Admittedly, the plaintiff's evidence is going on. The defendants-petitioners are yet to begin their evidence. From perusal of the amendment application, it appears that the application has been filed for seeking some correction in the statement made in various paragraphs of the plaint. So far the submission of learned counsel that there was no pleading in the plaint earlier and in fact the defendants-petitioners were delivered possession on the date of the sale deed executed by the defendant 1st set in favour of the defendant 2nd set-petitioners, as such, the

claim of the plaintiff that he was in possession and the defendants-petitioners dispossessed him is incorrect totally is concerned, it may be mentioned here that this is the merit of the case.

7. The Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal Vs. K.K. Modi (2006) 4 Supreme Court Cases 385** and again in the case of **Lakha Ram Sharma Vs. Balar Marketing Private Limited (2008) 17 Supreme Court Cases 671** has held that at the time of consideration of the amendment application the court is not required to go into the merits of the case. The same can be decided at the time of final hearing of the case.

8. In such circumstances when no prejudice is caused to the defendants-petitioners as no evidence is yet to be started, there is no question of interference in exercise of supervisory jurisdiction arises. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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