

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.476 of 2017

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Jagan Jha, S/o-late Jharokhi Jha, R/o Village-Dahibhat Madhopur, Tola-Baragaon,
P.S.-Pandaul, Dist-Madhubani Petitioner

Versus

1. Bishnudev Jha S/o Late Rajeshwar Jha
2. Brahmdev Jha S/o Late Bauku Jha
3. Dayakant Jha S/o Late Rambilash Jha All R/o Vill-Dahibhat Madhopur, Tola-
Baragaon, P.S.-Pandaul, Dist-Madhubani. Respondents

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Appearance :

For the Appellant/s : Mr. Baidya Nath Thakur
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-07-2017

Heard the learned counsel for the parties.

The present application under Article 227 of the Constitution of India has been filed by the plaintiff in Eviction Suit No.02/2011 questioning the order, by which the learned court below has turned down the prayer of the plaintiff for amendment in the plaint.

The fact has been accepted on behalf of the petitioner that the amendment in question has been prayed at the stage when the evidence on behalf of the parties in the suit was closed and the defendants had completed their arguments and the plaintiff had also put-forth substantial question of argument.

It transpires from the perusal of the averments made in the plaint (Annexure-A to the counter



affidavit) that the suit has been filed seeking eviction of the defendant no.1 from the suit premises on the ground of default in payment of rent and personal necessity. The suit premises has been described in Schedule-I of the plaint, wherein the defendant no.1 Bishundeo Jha has been shown in the western boundary. From the conjoint reading of the averments made in the plaint and the written statement filed on behalf of the defendant no.1 (Annexure-B to the counter affidavit), it becomes manifest that the plaintiff and the defendant no.1 are descendants of cosharers of the suit plot as recorded in the survey khatian. The defendant no.1 has contested the claim of title of the plaintiff over the suit land which has been made on the basis of purchase from one of the cosharers, and has denied his relationship of landlord and tenant with the plaintiff. In this backdrop, the mention of the name of the defendant no.1 in the western boundary of the suit premises in the plaint has been prayed to be deleted by amendment and prayer is to substitute it by incorporating a new description showing the plaintiff's purchased land in the said boundary.

The perusal of the amendment petition (Annexure-1) demonstrates that the two amendments have been prayed by the plaintiff. Learned counsel for the



defendants-respondents, however, raised no objection to the first amendment pertaining to the correction in the paragraph-8 of the plaint with regard to father's name as 'Wali' Pandey in place of 'Rabbi' Pandey. The controversy between the parties in the present application has converged to the second amendment, whereby the plaintiff has sought to change the description of the western boundary of the suit premises as given in the plaint on the ground of typing mistake.

Learned counsel for the petitioner has strongly relied upon the decision in the case of **Sajjan Kumar Vs. Ram Kishan, (2005)13 SCC 89** in support of his submission that the amendment in the plaint for correcting the incorrect description of the suit premises should be allowed in order to bring the real question in controversy between the parties to the fore and avoid complications at the stage of execution. It has been submitted that the "*real controversy test*" has been ignored by the learned court below which has proceeded to reject the prayer for amendment only on the ground that it has been made at belated stage.

There is no quarrel about the proposition of law laid down by the apex court in **Sajjan Kumar** (Supra). However, the setting of facts in the present case, as noticed



above, where the suit for eviction has been filed by one co-sharer against the other co-sharer claiming title on the basis of purchase from another cosharer distinguishes this case, and the submission on behalf of the defendants-respondents cannot be brushed aside in the facts and circumstances of the case that they went to trial and have adduced their evidence treating the said description of the suit property as admission on the part of the plaintiff. Learned counsel, in fact, has elaborately placed the averments made by the defendant-respondents in their written statement (Annexure-B to the counter affidavit) to substantiate the submission that the real dispute between the parties is with regard to title over the suit property. It has also been contended that if the proposed second amendment is allowed, it would lead to de novo trial and the defendant-respondents would have to file additional written statement and lead evidence afresh.

After considering the submissions and perusal of the materials on record, it is limpid that the suit has been filed for eviction on the ground of default in payment of rent and personal necessity. It is well settled that in such a case, the existence of relationship of landlord and tenant between the parties to the suit is *sine qua non* for the purpose of passing the decree for eviction as prayed. The plea,



which has been sought to be incorporated by way of amendment in the western boundary of the suit premises, has no basis at all in the averments made in the plaint and during the course of submission on behalf of the petitioner also, it could not be pointed out that the plaintiff has led evidence in the suit in consonance with the western boundary as sought to be amended. This Court, therefore, finds substance in the submission on behalf of the defendant-respondents and holds that the plaintiff-petitioner cannot be allowed to change the description of the suit property by incorporating the fact regarding his own purchase of land lying in the western boundary by way of amendment on the flimsy ground that the wrong mention of the boundary was by mistake of typist. The effect of the amended Order 6 Rule 17 C.P.C. is also staring at the face of the plaintiff.

For the aforesaid reasons and discussions, this application is allowed in part, so far as it relates to the amendment in plaint in paragraph-8 with regard to the correction of the name as 'Wali' Pandey in place of 'Rabbi' Pandey and the impugned order is quashed to that extent only. This Court further holds that the learned court below has committed no error in rejecting the prayer of the plaintiff,



so far it relates to the amendment seeking to change the identity of the suit premises by replacing the description of its western boundary, and accordingly the impugned order is upheld to that extent.

This application stands disposed of accordingly.

(V. Nath, J)

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