

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.501 of 2016**

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Devendra Abhay @ Devendra Kumar Abhay & Ors

.... Petitioner/s

Versus

Mohan Kumar Padamakar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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

ORAL ORDER

3 15-02-2017 Heard the learned counsel, Mr. Ranjan Kumar Dubey

for the petitioners and the learned counsel, Mr. Shailendra Kumar

Singh for the respondent.

Perused the impugned order dated 08.04.2016 passed
by learned Additional Munsif VI, Siwan in Eviction Suit No.6 of
1995 whereby the learned court below has rejected the amendment
application filed by the plaintiffs-petitioners under Order VI Rule
17 C.P.C.

It appears that aforesaid eviction suit was filed by the
plaintiffs-petitioners for eviction of the defendant-respondent on
the ground of personal necessity only. After obtaining leave to
contest, the defendant-respondent filed written statement. Issues
have been framed but still today no witness has been examined by
either party. At this stage, the application was filed by the



plaintiffs-petitioners under Section 151 C.P.C. praying therein to permit the plaintiff to convert the eviction suit to a regular title suit. The same was rejected by the trial court and then the petitioner filed writ application before the High Court being CWJC No.8878 of 2014. This court while allowing the petitioner to withdraw the writ application granted liberty to the petitioner to pursue his remedy available under the law before the court below. Thereafter, the petitioners filed the application under Order VI Rule 17 C.P.C. praying for amendment in the plaint. The amendment application has been annexed as Annexure 4 to this civil miscellaneous application.

From perusal of this amendment application, it appears that now the plaintiff is changing the plaint to the effect that the plaintiff is the owner of the property and, therefore, relief has been claimed for declaration of his title then recovery of possession of the suit property. The trial court by the impugned order rejected the application on the ground that earlier the same relief was rejected.

From perusal of the order of this court passed in the writ application, it appears that this court has granted liberty to the petitioner to pursue the remedy according to law. Admittedly, the parties have not adduced any evidence in the suit.



This Court in the case of **Balram Medical Hall vs. Rajendra Prasad and Ors., 2007(3) PLJR 778** considered the decisions of the Supreme Court in AIR 2004 Supreme Court 4102=2001(3) PLJR 233 and various other decisions held that the principles to be applied while deciding amendments are essentially based on rules of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court. In this decision, this court has held that the eviction suit can be converted to a regular title suit and the court has the jurisdiction to permit the eviction suit to be converted into a regular title suit.

Admittedly, the present eviction suit is of the year 1995, therefore, the proviso to Order VI Rule 17 C.P.C. will not come into play in the present case in view of the decision of the Supreme Court (2017) 1 Supreme Court Cases 765 wherein it has been held that proviso will apply in the pleadings when it is filed after 1st of July 2002.

Here, in the present case, although the suit is of the year 1995 but still evidence has not yet started, therefore, there is no question of prejudice to the defendant arises. The defendant is questioning the title of the plaintiff. Therefore, the plaintiff has the liberty to convert this eviction suit to a regular title suit by filing



amendment application.

So far the submission of the learned counsel for the respondent that the plaintiff may withdraw this eviction suit and may file regular title suit is concerned, in my opinion, it is only a technical objection. If that procedure is applicable then why not this eviction suit be converted to a regular title suit. The Courts have wide discretion to allow a party to amend his pleading. The only condition is that it should not prejudice the other side and even if there is some prejudice and he is compensated by the grant of cost, the court can allow the amendment granting cost, if the amendment sought for is necessary for determination of the real controversy between the parties.

In the present case, the plaintiff filed the eviction suit. The defendant is saying that in fact, the defendant is the owner of the suit property. In such circumstances, there is no reason as to why the plaintiff's application for amendment should not be allowed considering the stage of the suit. The court below has not considered these aspects of the matter and the law laid down by the Supreme Court and the High Court.

In the result, this civil miscellaneous application is allowed. The impugned order is set aside. The amendment application filed by the plaintiffs-petitioners is hereby allowed.



The court below is directed to proceed according to law. The defendant may file additional written statement to the amendment sought for by the plaintiffs.

(Mungeshwar Sahoo, J)

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