

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2793 of 2014

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1. Dina Nath Singh S/O Late Ram Pujan Singh Resident Of Mohalla - Gajaradh,
Gaurakshani Sasaram, P.O. + P.S. Sasaram, District - Rohtas, Sasaram

2. Budha Raj Singh S/O Sheo Shankar Singh Resident Of Mohalla - Gajaradh,
Gaurakshani Sasaram, P.O. + P.S. Sasaram, District - Rohtas, Sasaram

.... Petitioner/s

Versus

1. Nagar Parishad Sasaram Through The Executive Officer Nagar Parishad Sasaram
At And P.O. Sasaram, P.S. Sasaram, District - Rohtas, Sasaram

2. The Chairman Nagar Parishad, Sasaram At And P.O. Sasaram, P.S. Sasaram,
District - Rohtas, Sasaram

3. Muralidhar Singh S/O Ram Bachan Singh R/O Village - Parawan, P.O. Nonsari,
P.S. Nokha, District - Rohtas, Sasaram At Present Mohalla - Gajaradh,
Gaurakshani, Sasaram, P.O. Sasaram, P.S. Sasaram, District - Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. UMA SHANKAR SINGH, ADV

For the Respondent/s : Mr. VIJAY SHANKAR UPADHYAY, ADV

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 11-01-2017

Heard learned counsel for the parties.

Questioning the legal sustainability of the impugned order

by which the learned court below has rejected the prayer of the



plaintiffs-petitioners for amendment in the plaint, the present application under Article 227 of the Constitution of India has been filed.

The plaintiffs filed T.S. No. 26 of 2012 for declaration of title over the suit land described in Schedule-A of the plaint. From the averments made in the plaint (Anneuxre-1) it transpires that the plaintiffs have claimed the suit land to be part of the purchased land of their predecessors in interest and have alleged that during the recent municipal survey, the suit land has been wrongly recorded in the name of Nagar Palika, Sasaram in plot no. 902 of khata no. 881. The defendants filed contesting written statement denying the assertions and the claim of the plaintiffs over the suit land.

During the pendency of the suit, the plaintiffs filed two petitions on 24.10.2013. In the first petition the plaintiffs made the prayer for impleading the present respondent no. 3 as party defendant in the suit. The second petition contained the prayer for amendment in the plaint under Order 6 Rule 17 CPC. The defendants filed their rejoinder to the said two petitions. By the impugned order the learned court below has turned down the prayer made by the plaintiffs in the two petitions observing that the plaintiffs may file a fresh suit in view of the subsequent event as mentioned in the two petitions.



After considering the submissions on behalf of the parties as well as the materials on record, it is manifest that the plaintiffs have claimed their title over the suit land asserting the same to be part of their purchased land. It is also evident from the averments made in the plaint that the suit was filed after the plaintiffs got the knowledge that the suit land was recorded in the new municipal record of rights in the name of the Nagar Palika, Sasaram. In the two petitions (Annexure-3) and (Annexure-4) the plaintiffs have alleged that the respondent no. 3 (of the present application) has fixed drain pipe in the suit land and has constructed pakka drainage in the suit land for flow of his drain water. In view of the said action of the respondent no. 3, the plaintiffs have filed two petitions, praying for impleadment of the respondent no. 3 as party defendant and for incorporating the relief for removal of the drain pipes and pakka drainage from the suit land as fixed and constructed by the respondent no. 3. The allegations as made by the plaintiffs definitely relate to the suit land as well the action of the respondent no. 3 in fixing drain pipes and constructing pakka nali in the suit land during the pendency of the suit. In view of the survey entry of the suit land in the name of the defendant-municipality, the learned court below has also come to the conclusion that the plaintiffs can maintain their suit in view of the subsequent events as alleged. However, in this



fact situation, this Court is not persuaded to uphold the reasonings assigned by the learned court below. The principle laid down by the Apex court in ***Rajesh Kumar Aggrawal vs K.K. Modi (2006) 4 SCC 385*** can be fruitfully noticed in the present context:-

“16. Order 6 rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.”

Tested on the anvil of the above dictum, the impugned order is held to be legally not sustainable and therefore deserves to be overturned. Accordingly, this application is allowed and the impugned order is quashed. The two petitions (Annexure-3 and



Annexure-4) dated 24.10.2013 filed by the plaintiffs are allowed.

The learned court below is further directed to proceed for expeditious disposal of the suit in accordance with law.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.02.2017
Transmission Date	N.A.

