

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.413 of 2016**

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Prem Sunder Jha

.... Appellant/s

Versus

Rajendra Mishra & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar

For the Respondent/s : Mr.

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

3 10-02-2017 Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. Perused the impugned order dated 27.11.2015
passed by learned Subordinate Judge-I, Araria in Title Suit No.24
of 2008 whereby the learned court below has rejected the
amendment application filed by the plaintiff.

3. From perusal of the impugned order, it appears that
on 08.12.2010 itself issues have been framed and in the
amendment application although the plaintiff has stated that he
was dispossessed but no specification has been mentioned as to
from which part he has been dispossessed. Therefore, application
under Order 6 Rule 17 CPC is not maintainable.

4. In view of the above, it appears that the court below
has not considered as to whether the amendment sought for by the
plaintiff is necessary for determination of the real controversy



between the parties. On technical ground regarding the application for amendment the court below rejected the same as not maintainable. In my opinion, therefore, the court below has refused to exercise the jurisdiction vested in it by law.

5. The Hon'ble Supreme Court in **(2016) 1 Supreme Court Cases 332 (L.C. Hanumanthappa Vs. H.B. Shivakumar)** has held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties.

6. In the present case, it is admitted fact that the trial has not been concluded. Moreover, the case of the plaintiff is that he has been dispossessed subsequently. The Hon'ble Supreme Court in **(2006) 4 Supreme Court Cases 385 (Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others)** has held that at the time of consideration of the amendment application the falsity or otherwise of the amendment sought for is not required to be gone into. The same is a question that may be considered at the time of judgment. The plaintiff is praying for declaration of title and recovery of possession and, therefore, in my opinion, if the impugned order is allowed to stand then it will naturally lead to multiplicity of proceeding and it will occasion failure of justice.



7. Thus, the impugned order is set aside and this civil miscellaneous application is allowed. The amendment application filed by the plaintiff-petitioner is allowed. The plaintiff shall carry on amendment sought for according to law.

(Mungeshwar Sahoo, J)

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