

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9983 of 2012

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Kalabati Devi @ Kalabati & Ors

.... Petitioner/s

Versus

Md.Taiyab Khan & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abinash Kumar

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 07-08-2017 Heard learned Senior Counsel Mr. Sukumar Sinha
for the petitioners.

In spite of service of notice nobody appeared on
behalf of the respondents.

The plaintiffs-petitioners have filed this writ
application under Article 227 of the Constitution of India for
setting aside the order dated 05.05.2012 passed by the learned 3rd
Additional Munsif, Darbhanga in Eviction Suit No.04 of 1999/05
of 2012 whereby the learned Munsif has rejected the amendment
application filed by the plaintiffs-petitioners.

The learned Senior Counsel submitted that the
eviction suit was filed by the original plaintiff. During the
pendency of the eviction suit the original plaintiff sold the
property to Bishundeo Thakur and thereafter the original plaintiff
filed application for addition of the purchaser as co-plaintiff,



giving the details as, when the property was sold by the original plaintiff to the purchaser. According to the learned Senior Counsel, by the impugned order the court below rejected the application only on the ground that amendment for being added as party should have been filed by the purchaser and, therefore, the court below has refused to exercise the jurisdiction vested in it by law.

As stated above, nobody appeared on behalf of the respondents.

From perusal of the impugned order, it appears that the court below has rejected the application on the ground that the application has not been filed by the purchaser. It is admitted fact that the original plaintiff sold the property to Bishundeo Thakur. The plaintiff, is therefore, praying for addition of the said purchaser as co-plaintiff because of the fact that he has already sold the property in suit. So far amendment is concerned, it is subsequent event. It is also admitted fact that trial has not commenced. It is also admitted fact that no rejoinder to the amendment application was filed. Therefore, when there was no dispute about amendment of the plaint, the ground on which the amendment application has been rejected is not a legal ground and in my opinion, on that ground that the purchaser should have



filed the addition application, the amendment application could not have been rejected. Thus, the court below by the impugned order has refused to exercise the jurisdiction vested in it by law and has wrongly rejected the amendment application.

Thus, this writ application is allowed. The impugned order dated 05.05.2012 passed by the 3rd Additional Munsif, Darbhanga in Eviction Suit No.04 of 1999/05 of 2012 is set aside. The plaintiff's application for amendment of the plaint is allowed and the purchaser Bishundeo Thakur is added as co-plaintiff in the eviction suit.

Harish/-

(Mungeshwar Sahoo, J)

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