

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1252 of 2016**

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Raj Ballabh Sharma son of Sri Shital Sharma resident of Village- Basudeopur
Chandel, P.S.- Mahnar, District- Vaishali.

... .. Appellant/s

Versus

1. Balram Singh son of Late Ram Swaroop Singh
2. Kalyani Singh W/o Late Krishan Kumar Singh
3. Kumari Sangita S/o Krishan Kumar Singh
4. Pinki Kumari D/o Krishan Kumar Singh
5. Nitesh Kumar son of Krishan Kumar Singh
6. Nikhil Kumar son of Krishan Kumar Singh All are resident of Basudeopur
Chandel, P.S.- Mahnar, District- Vaishali.
7. Binod Kumar Singh son of Late Maheshwar Singh resident of Village-
Basudeopur Chandel, P.S.- Mahnar, District- Vaishali.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Surendra Kishore Thakur Mr. Alok Kumar Jha, Advocates
For the Respondent No.7	:	Mr. Amresh Kumar Sinha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL ORDER

5 08-11-2017 Despite service of notice, respondent Nos. 1 to 6 have not
appeared.

2. An order, dated 04.01.2013, passed by the learned Sub-
Judge-VII, Vaishali at Hajipur in Title Suit No. 95 of 2010 has
been put to challenge, whereby an application filed by the
plaintiff/petitioner under Order 6 Rule 18 of the Code of Civil
Procedure, 1908, has been rejected on the ground that such
amendment would amount to change of the nature of the suit.

3. I have heard learned counsel for the petitioner and the
learned counsel appearing on behalf of the contesting



respondent No.7.

4. It transpires from the impugned order that the suit was filed for declaration of title and confirmation of possession of the petitioner over the suit property. In the amendment petition, the plaintiff asserted that during the pendency of the suit, at the time of inspection by the Advocate Commissioner or immediately thereafter, the plaintiff came to be dispossessed by the defendants/respondents and, therefore, the plaintiff sought amendment in the plaint seeking relief of restoration of possession.

5. Learned counsel appearing on behalf of the petitioner has submitted that the reason for rejection of amendment petition which the Court has recorded is that the plaintiff took the plea of dispossession after filing of the written statement. The other reason assigned by the Court below is that the amendment if allowed will amount to change of the nature of suit. Both the reasons are not at all sustainable in view of the nature of the amendment sought, learned counsel contends.

6. Learned counsel appearing on behalf of the contesting respondent, on the other hand, while vehemently opposing the application has submitted that the whole purpose of seeking amendment is to improve the plaintiff's case after filing of the



written statement, which is not permissible. He has also submitted that originally the plaintiff has sought for confirmation of possession though he was not in possession and now the plaintiff is seeking restoration of possession. This amounts to change the nature of the suit, he contends.

7. I find substance in the submission made on behalf of the petitioner. The Court below ought not to have rejected the amendment petition on the ground of same having been filed after filing of the written statement. Correctness of the fact as to whether the plaintiff was dispossessed during the pendency of the trial is a matter, which can be seen on the basis of evidence adduced at the trial. The view of the Court below that such amendment would change the nature of the suit is not at all tenable, in the facts and circumstances of the case.

8. The impugned order is, accordingly, set aside. The Court below is directed to pass an order afresh on the petitioner's application for amendment in the light of the observation made herein above.

9. This application is allowed.

(Chakradhari Sharan Singh, J)

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