

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.362 of 2017

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1. Md. Nayeem,
2. Md. Nashruddin
3. Md. Bashiruddin,
All sons of Late Md. Sharif, residents of Village- Hathauri, Police station- Hussainganj, District- Siwan.

.... Petitioners

Versus

1. Sanjay Kumar Verma, Son of Late Sachchidanand Sinha, resident of Village- Hathauri, Police Station- Hussainganj, District- Siwan.
2. Rani Srivastava, Wife of Sri Murari Prasad Srivastava, daughter of Late Sachchidanand Sinha, resident of Ambikapur, District- Ambikapur, Chhatisgarh, presently resident of Village- Hathauri, Police Station- Hussainganj, District- Siwan.
3. Akhileshwar Sharan Srivastava
4. Gyaneshwar Prasad,
5. Nanhejee
6. Ajay Kumar,
7. Vijay Kumar, All sons of Late Radha Gobind Sharan, residents of Village- Hathauri, Police Station- Hussainganj, District- Siwan.
8. Smt. Meena, Wife of Late Munna @ Sarweshwar Sharan Srivastava,
9. Rakesh Kumar Srivastava, Son of Late Munna @ Sarweshwar Sharan Srivastava.
10. Smt. Seema, Wife of Sri Rajesh Srivastava, daughter of Late Munna @ Sarweshwar Sharan Srivastava, residents of Mauza- Kurhni, P.S.- Gurni, District- Sarguja, Madhya Pradesh, presently residents of Village- Hathauri, Police Station- Hussainganj, District- Siwan.
11. Arun Kumar Sinha
12. Ashok Kumar, both son of Late Janardan Prasad, residents of Village- Hathauri, Police Station- Hussainganj, District- Siwan.
13. Singhasan Chaudhary, Son of Late Deo Narayan Chaudhary,
14. Dinanath Chaudhary,
15. Ramnath Chaudhary
16. Hridyanath Chaudhary
17. Prabhunath Chaudhary,
18. Sarbunath Chaudhary
All sons of Late Indrasan Chaudhary,
19. Sonia Devi,
20. Janki Devi,
21. Tetari Devi
22. Phool Kumari Devi,
All daughters of Late Indrasan Chaudhary,
23. Name not known, Wife of Late Pai Chaudhary,
24. Ramadhar Chaudhary,
25. Ram Awatar Chaudhary
26. Rampiyar Chaudhary,
All sons of Late Pai Chaudhary,
All residents of Village- Hathauri, Police Station- Hussainganj, Distt.- Siwan.
27. Kamlawati, Wife of name not known to petitioner, daughter of Late Pai



Chaudhary, resident of Madrapali, P.O. Laheji, P.S.- Daraunda, District- Siwan, Presently resident of Village- Hathauri, Police Station- Hussainganj, District- Siwan.

28. Ganesh Chaudhary, Son of Late Khenhar Chaudhary,

29. Piyaria Devi, daughter of Late Khenhar Chaudhary,

30. Singaria Devi, Wife of Harihar Chaudhary, daughter of Late Khenhar Chaudhary,

31. Most. Kiso, wife of Late Sri Ram Chaudhary,

32. Rambabu Chaudhary,

33. Manoj Chaudhary, both sons of Late Sri Ram Chaudhary, residents of Village- Hathauri, Police Station- Hussainganj, Dist.- Siwan.

34. Kanti Devi, Wife of Rajdeo Chaudhary, resident of Village- Inayatpur, Kohra Bazar, District- Saran

35. Indu Devi, Wife of Shankar Yadav, all daughters of Late Ram Chaudhary, resident of Village- Fatepur, P.O.- Maharajganj, District- Siwan,

36. Pramila Kumari, daughter of Late Ram Chaudhary, Presently residents of Hathauri, Police Station- Hussainganj, District- Siwan.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Umesh Kumar Roy, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 24-04-2017 Heard Mr. Rajendra Narayan, learned senior counsel
appearing for the petitioners.

Some of the defendants in the suit are petitioners in this application and are aggrieved by the order by which the prayer of the plaintiffs for amendment in the plaint has been allowed by the appellate court below.

The matrix of the facts discloses that the suit was filed by the plaintiffs for declaration of title and confirmation of possession. The defendants appeared and filed the written statement contesting the claim of title of the plaintiffs over the suit



property. The suit was dismissed after hearing the parties. The plaintiffs filed appeal against the decree of dismissal of the suit.

During the pendency of the appeal, the plaintiffs filed a petition praying therein for amendment in the plaint incorporating the relief for recovery of possession. It was the case of the plaintiffs that the defendant-petitioners dispossessed the plaintiffs between the period from 2003 to 2007 by establishing several constructions over the suit land and therefore the relief for recovery of possession was necessary to be added. By the impugned order, the appellate court below has allowed the prayer, as made by the plaintiffs-appellants.

Mr. Narayan, learned senior counsel appearing for the petitioners has firstly submitted that the learned court below has exercised the jurisdiction illegally and with material irregularity, ignoring the fact that similar prayer was also made earlier but rejected. It has been contended that there was earlier an order for directing the parties to maintain status quo over the suit land passed on the petition filed by the plaintiff praying for injunction restraining the defendants for alienating the suit property. It has been pointed out that the suit was dismissed in the year 2007 and therefore if the plaintiff would have been dispossessed during the period prior to 2007, then the plaintiff



ought to have filed a petition under Order 39 Rule 2-A of the C.P.C. alleging violation of the injunction order. It has been next contended that valuable right has accrued to the defendants due to acquiescence and waiver when the plaintiff omitted to pray for recovery of possession at the early stages, during the pendency of the suit, when the defendants-petitioners categorically asserted their own possession over the suit land. The submission has also been made that even though the amended provision of Order 6 Rule 17 C.P.C. does not apply to the suit, still the appellate court below ought to have refused the prayer, as made on behalf of the petitioners after considering the fact that even earlier too the plaintiff filed a petition for amendment, which was not pressed and just after four days, the present petition for amendment was filed.

After considering the submissions and perusal of the materials on record as well as the impugned order, it is manifestly clear that the main note of discord between the parties pertains to the title over the suit land. The plaintiffs initially have sought the relief for confirmation of possession, but now by the amendment, the plaintiffs have sought to incorporate the relief for recovery of possession alleging dispossession by the defendant-petitioners pendentalite. It is thus evident and has rightly been taken into



notice by the court below in the impugned order that the question of title over the suit property is the main issue between the parties and therefore even change of the consequential relief from confirmation of possession to recovery of possession would not affect the case of either of the party. Manifestly, it is the case of the defendant-petitioners that they have title and possession of the suit land, as owner thereof, and have denied the claim of title and possession over the suit land. By the proposed amendment, adding the prayer for recovery of possession, the said case of the defendants is not going to be affected to the defendants.

This Court thus does not find substance in the submission advanced on behalf of the defendant-petitioners that a right has accrued to the defendants to be in possession over the suit land by way of acquiescence or waiver, as the plaintiff did not pray for such consequential relief, for the simple reason that the defendant-petitioners has not claimed adverse possession of the suit land. There is, therefore, no illegality in the impugned order, whereby the learned court below has allowed the prayer for the amendment holding that the relief for recovery of possession may be granted once the plaintiffs succeed in establishing their title over the suit land as claimed. The learned court below has also imposed cost upon the plaintiffs and has granted liberty to the



defendants to file additional written statement in the suit.

In the background of these facts, this Court is not inclined to exercise its jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is, accordingly, dismissed. However, the dismissal of this application shall not preclude the defendant-petitioners from raising their objections in accordance with law, and any observation made in this order shall also not prejudice the case of the parties.

(V. Nath, J.)

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