

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24057 of 2013

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Bhagwani Devi @ Bimla Devi

.... Petitioner/s

Versus

Hatibansh Prasad & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Anshuman

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 18-10-2017 Heard the learned counsel, Dr. Anshuman, appearing on behalf of the defendant petitioner.

This application under Article 227 of the Constitution of India has been filed by the defendant petitioner for setting aside the order dated 03.09.2013 passed by Sub Judge I, Bhagbhua Kaimur in Title Suit No.113 of 2010 whereby the learned Sub Judge has allowed the amendment application filed by the plaintiff respondent.

Perused the impugned order. The learned counsel, Dr. Anshuman, appearing on behalf of the petitioner submitted that in fact the defendant petitioner is in possession of the suit property after purchase and after constructing the house thereon. The plaintiff filed complaint case alleging that the defendant forcibly entered into the house after breaking the lock which was disbelieved by the criminal Court and the complaint has been



disbelieved. The trial Court has also passed order to maintain status quo and against that, Misc. Appeal is pending in such circumstances, the learned Court below could not have allowed the amendment application, particularly when no such plea was raised in the plaint.

Perused the impugned order. All the arguments advanced by the learned counsel for the defendant petitioner relates to the merit of the amendment sought for by the plaintiff. It is settled principal of law as has been laid down by the Hon'ble Supreme Court reported in *(2006)4 SCC 385 and (2008)17 SCC 671* that the Court is not required to give any finding on merit of the amendment application. The Court is required to see as to whether the amendment sought for is necessary for just decision of the controversy between the parties or not.

In the present case, admittedly, the suit has been filed for declaration that the sale deed executed in favour of the defendant petitioner is null and void. By way of amendment, the plaintiff is now seeking the relief for recovery of possession. It is admitted fact that only issues have been framed. Now, therefore, when the evidence has not yet started, there is no question of any prejudice to the defendant arises. Moreover, according to the defendant himself, he is in possession of the property. In my opinion,



therefore, the amendment sought is at the very initial stage and the amendment sought for is necessary for just decision of the controversies between the parties. In such circumstances, the learned trial Court has rightly exercised the jurisdiction under Order VI Rule 17 CPC. Thus, no case for interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India is made.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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