

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12632 of 2012

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1. Jay Shankar Mandal S/O Late Radhe Mandal Resident Of Village Masudanpur, P.S. Nathnagar, District- Bhagalpur
 2. Smt. Ranju Devi W/O Jay Shankar Mandal Resident Of Village Masudanpur, P.S. Nathnagar, District- Darbhanga

.... Petitioners

Versus

Umesh Yadav S/O Late Kesho Yadav Resident Of Village And P.O.- Sardarpur, Police Station- Nath Nagar Hal Masudanpur, District- Bhagalpur

.... Respondent

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Appearance :

For the Petitioners : Mr. Jitendra Kishore Verma, Advocate
For the Respondent : Mr. Diwakar Upadhyaya, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

3 04-12-2017 This application has been filed for quashing the order dated 16.08.2011 passed by learned Sub Judge-4, Bhagalpur in Title Suit No.560 of 2010 whereby and whereunder the learned Sub Judge refused to amend the plaint under Order VI Rule 17 CPC.

2. Heard learned counsel for the petitioners as well as the respondent.

3. The petitioners are plaintiff of Title Suit No.560 of 2010. They have filed the suit for declaration that the sale deed dated 04.11.2009 executed by him in favour of defendant is fraudulent and without any consideration. The said document has been obtained by defendant committing fraud and it does not convey any right, title or interest in favour of defendant. The plaintiffs further sought relief for injunction restraining the defendant from dispossessing him from the suit land. The



defendant appeared and filed written statement. It is alleged that defendant forcibly dispossesses the plaintiffs from the suit land with the help of anti-social element on 01.04.2011. The plaintiffs immediately, i.e., on 07.04.2011 filed an amendment petition seeking amendment for bringing the said fact on record. The plaintiffs sought relief for recovery of possession and also mense profit for the period of his dispossession. The plaintiffs have right to seek relief for recovery of possession particularly when they were dispossessed from the suit premises. The relief of recovery of possession is within the prescribed period of limitation. The court below has rejected the petition observing that nothing has been produced by way of evidence or any document to show the case of their dispossession from the suit land. The case is at initial stage and amendment has been filed within one week his dispossession.

4. In view of above, the impugned order refusing the amend the plaint is set aside and this application is allowed. The defendant is at liberty to file written statement to the extent of amended plaint within a time to be fixed by the trial court.

(Sanjay Kumar, J)

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