

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17630 of 2013

Prabhu Sah

.... Petitioner/s

Versus

Ram Barai Sah & Ors

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Nagendra Rai

For the Respondent/s : Mr. Anil Kr Uapdhyay

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 22-05-2017 Heard the learned counsel, Mr. Nagendra Rai for the petitioner and the learned counsel, Mr. Pankaj Kumar Dubey for the respondent No.1. Nobody appeared on behalf of the State-respondent.

Perused the impugned order dated 16.04.2013 passed by the learned Munsif, Gopalganj in Title Suit No.197 of 2008 whereby the learned court below rejected the amendment application filed by the defendant-petitioner praying for amendment in the written statement.

From perusal of the impugned order, it appears that the learned court below rejected the amendment application only on the ground that the plaintiff has to prove his case and, therefore, the amendment sought for by the defendant-petitioner is not at all required.

It appears that while rejecting the amendment



application, the trial court did not consider the fact that the dispute between the plaintiff and the defendant is that whether the defendant-petitioner is a privileged tenant or not. According to the plaintiff, the petitioner is not a privileged tenant of the concerned village as he has also houses in other villages. The petitioner filed the written statement alleging that he is a privileged tenant of that village and he has no other houses and lands in another village. The court below also not considered the fact that trial had not commenced on the date of rejection of the amendment application. The amendment sought for is to the effect that the petitioner is residing in the said village since 1980 and this year was not given in the written statement earlier. In the written statement, the defendant also sought amendment claiming title by adverse possession. By amendment, the defendant also sought amendment in the written statement by adding a schedule of the property on which purcha has been granted to the petitioner.

In view of the above facts and circumstances of the case, in my opinion, the amendment sought for is necessary for determination of the real controversy between the parties. The learned court below proceeded in wrong angle and rejected the amendment application and if amendment application is not allowed, the defendant-petitioner shall be greatly prejudiced.



Further, the amendment sought for is pre-trial amendment.

Thus this writ application is allowed. The impugned order dated 16.04.2013 passed by learned Munsif, Gopalganj in Title Suit No.197 of 2008 is hereby set aside. The amendment application filed by the defendant-petitioner is allowed.

(Mungeshwar Sahoo, J)

Saurabh/-

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