

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.119 of 2016

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Abdul Hafiz son of Sk. Majid resident of village-Bangaon Tole,
Darbakhana, P.S. Bajpatti, District-Sitamarhi.

.... Appellant

Versus

1. Md. Nazim son of late Md. Kashim, respondent no. 1st party
 2. Md. Anwar son of late Md. Kashim, respondent no. 2nd party
 3. Abdul Hamid
 4. Abdul Samid
 5. Abdul Jafir
- Respondents 3 to 5 are sons of late Sk. Majid
6. Noorjahan D/O late Sk Majid wife of Iftakhar Ali
All are resident of village Bangaon tole, Darbakhana, P.O. Harpurwa,
P.S Bajpatti, District Sitamarhi.
 7. Sah Jahan daughter of late Sk. Majid wife of Sk. Md. Khalique resident
of village and P.O. Betaha, P.S. Parihar, District Sitamarhi.

.....Respondents IIIrd Party

.... Respondents

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Appearance :

For the Appellant/s : Mr. Alok Kumar Jha, Advocate

For the Respondent/s : Mr. Kumud Kumar Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 18-03-2017 Heard learned counsel for the petitioner and learned
counsel for the respondents.

By the impugned order the appellate court below has
refused the prayer of the plaintiff-petitioner for amendment in the
plaint.

The suit was filed by the plaintiff-petitioner for
declaration of title and confirmation of possession. Further relief
was also prayed for declaration of the gift deed and the sale deed,
said to have been executed in favour of the defendant-1st party and



also defendant-2nd party, to be void. The suit was dismissed and the appeal has been filed by the plaintiff-petitioner. During the pendency of the appeal, the plaintiff-petitioner has filed petition before the appellate court below making a prayer for amendment in the plaint for addition of the relief that the Khatian entry in the name of the predecessors of the defendants is illegal. By the impugned order learned appellate court below has refused the prayer for amendment.

Learned counsel for the petitioner has submitted that the proposed amendment would not change the nature, scope and cause of action of the suit and is in the nature of consequential relief. It has also been the specific stand that the petitioner does not require to adduce oral or documentary evidence if the prayer for amendment is allowed.

Learned counsel appearing for the respondents in view of the aforesaid stand has submitted that if the plaintiff-petitioner is not allowed to adduce either oral or documentary evidence, after the amendment, the prayer for amendment as prayed may be allowed.

After considering the submissions on behalf of the parties and facts and circumstances of the case, it is evident that the moot question to be decided in the suit/appeal pertains to rival



claim of title by the parties over the suit land. As such, the relief with regard to wrong entry in the survey khatian is only a follow up relief.

In that view of the matter, this Court does not find that any prejudice will be caused to the defendants-respondents if the prayer for amendment is allowed after accepting the stand of the learned counsel for the petitioner that the plaintiff-petitioner would not be allowed to lead oral or documentary evidence in pursuance to the amendment. This Court therefore is inclined to allow the petition dated 17.03.2016 (Annexure-2) subject to payment of cost of Rs.5,000/- to the defendants-respondents within a period of six weeks from the date of receipt/production of a copy of this order in the court below.

This application is, accordingly, allowed and the impugned order quashed.

(V. Nath, J)

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