

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.338 of 2016

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1. Samsul Miya, Son of Late Shahid Miyan, Resident of Banpur Latif, P.O.-
Panditpur, P.S.- Janta Bazar, Dist.- Saran at Chapra, Pin Code- 841224.

.... Appellant/s

Versus

1. Gaffar Miyan
2. Aslam Miyan Both Sons of Late Aishu Miya
3. Nuresha Khatoon, D/o Late Reyazuddin Miya W/o Late Mainuddin
Miya, All residents of Village- Banpur Latif, P.O.- Panditpur, P.S.- Janta
Bazar, Dist.- Saran at Chapra.

.... Respondent/s

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Appearance :

For the Appellant/s : M/s. Ashok Kumar & Prashant Kashyap
For the Respondent/s : Mr. Umesh Kumar Mishra

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

5 08-12-2017

Heard both sides.

The petitioner has filed this petition against the order dated 08.05.2016 by which the petition dated 13.07.2015 filed by the petitioner/ plaintiff for amendment of the plant has been rejected.

The petitioner/ plaintiff filed suit for grant of perpetual injunction restraining the defendants not to interfere into the peaceful possession over the lands of the petitioner. The defendants appeared and filed written statement stating that they got Parcha under Bihar Privileged Persons Homestead Tenancy Act. The petitioner thereafter filed petition for insertion of paragraph 5A after paragraph 5 and other facts and for amendment of the prayer that the Parcha issued in favour of the defendants is illegal, invalid, without jurisdiction and not binding upon the plaintiff but the learned Sub-Judge rejected the petition for amendment holding that the amendment petition is filed to fill up



the lacuna as the plaintiff did not file any petition before the competent authority for setting aside the Parcha issued in favour of the defendants. Being aggrieved by the aforesaid order, the petitioner filed this Civil Misc. petition.

The learned counsel for the petitioner submits that petitioner got land through deed of gift and he has been coming in peaceful possession of the land but the defendants are trying to disturb his possession and, therefore, he filed suit for grant of perpetual injunction against the respondents. The petitioner was not knowing about the issuance of Parcha under Bihar Privileged Persons Homestead Tenancy Act and the petitioner came to know about the issuance of Parcha only after the defendants filed written statement and thereafter the petitioner filed petition for amendment of plaint and in the prayer portion for declaration that the Parcha issued in favour of the defendants is invalid, illegal and without jurisdiction. It will not change the nature of suit and no harm or prejudice shall be caused to the defendants.

On the other hand, the learned counsel for the respondents submitted that petitioner was knowing about the issuance of Parcha and he should have filed petition or appeal before the competent authority against the issuance of Parcha under B.T. Act in favour of the respondents. Therefore, the learned Sub-Judge has rightly rejected the amendment petition.

Having considered the submissions of the parties, it is evident that the petitioner filed suit for grant of perpetual injunction and he came to know about the issuance of Parcha in favour of defendants after perusal of the written statement of the defendants. Thereafter he filed petition for amendment of prayer portion for declaration that Parcha issued in favour of defendants is invalid,



illegal and without jurisdiction.

The principle governing the field of amendment in plaint is settled that all facts, in order to decide the real controversy between the parties, should be allowed to be brought on record. The learned counsel for the respondents has not pointed out that actions of the plaintiff or the cause is barred by any law by limitation or the plaintiff is prohibited by some act or statute to bring the aforesaid amendment.

Thus, I find that the amendment sought by plaintiff is very much essential for deciding the real issue between the parties and the learned Sub-Judge has committed jurisdictional error in rejecting the petition for amendment. Accordingly, the order dated 08.05.2016 passed by learned Sub-Judge-II, Saran, Chapra is set aside and the amendment petition is allowed.

This Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

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