

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.734 of 2017

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Lakshman Rai Son of Late Ram Lakhan Rai, Resident of Chakaran, Budha Colony,
Police Station- Budha Colony, District- Patna.

.... Petitioner

Versus

Degree Rai Son of Budhu Rai, Resident of Chakaran, Budha Colony, Police
Station- Budha Colony, District- Patna.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Kamlesh Kumar Sharma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-05-2017

Heard Mr. Kumar Uday Singh, learned counsel
appearing on behalf of the petitioner both on merits as well as in the
interlocutory application.

By the impugned order, the learned court
below has turned down the prayer for amendment of the plaint by
the plaintiff-petitioner.

The plaintiff-petitioner filed the suit for
eviction of the defendant on the ground of default in payment of
rent. The suit was dismissed holding that there was no relationship
of landlord and tenant in between the plaintiff and the defendant.
However, the appellate court below in appeal remanded the matter
back for fresh consideration. After remand, the plaintiff filed the



petition for amendment seeking to incorporate the relief for recovery of possession on the basis of title by way of alternative relief with allied amendments. The court below has rejected the petition filed by the plaintiff by the impugned order.

After considering the submissions on behalf of the petitioners and perusal of the impugned order, it is evident that the suit has been filed by the plaintiff under the Bihar Building (Lease, Rent & Eviction) Control Act seeking an eviction decree against the defendant on the ground of default in payment of rent. After the dismissal of the said suit and remand thereafter by the appellate court below, the amendment has been sought whereby the relief for recovery of possession on the basis of title has been prayed as alternative prayer. The law has now been well settled by the apex court in ***Tribbhuvanshankar Vs. Amrutlal, (2014) 2 SCC 788*** that in an eviction suit, the question of title cannot be gone into nor the relief for recovery of possession on that basis can be granted. Even otherwise also, the matter is at the stage after the remand and the proposed amendments will certainly change the nature of the suit. This Court does not find that the learned court below has committed any error or illegality in passing the impugned order.



The application is, accordingly, dismissed.

However, the rejection of the prayer for amendment will not prejudice the case of the petitioner for recovery of possession over the suit premises on the basis of title, in an independent action.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
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