

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.115 of 2018

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1. Roja Miya @ Rojadin Miya Son of Doma Dhunia @ Doma Miya
2. Sagar Miya Son of Sultan Miya Both residents of Village Vishnupura,
Police Station Sidhwaliya, District Gopalganj..... Appellant/s

Versus

1. Smt. Tetri Devi Wife of Shri Rameshwar Bhagat Resident of Village -
Vishnupura, Police Station - Sidhwalia, District - Gopalganj.. Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

2 21-06-2018

Heard the learned counsel for the petitioners.

The petitioners have filed this Civil Misc. petition against the order dated 28.06.2016 by which the learned Sub-Judge-XIV, Gopalganj allowed the amendment petition of the plaintiff. The plaintiff intended to amend the plaint by inserting that from 23.03.2013 to 25.03.2013 the defendants forcefully filled earth and constructed temporary structure and, accordingly, the amendment petition was allowed.

The learned counsel for the petitioners submits that the plaintiff filed Title Suit in the year 2008 for declaration of title over the disputed land and for restraining the defendants from constructing any structure over the disputed land. The defendants filed written statement in the year 2008 itself and stated in the written statement that on the disputed five dhurs of land house of the defendants besides cremation ground, Gumti, hut and trees are



standing. It is submitted that plaintiff on the basis of such statement made in the written statement filed petition for amendment at a belated stage. The plaintiff has not even disclosed the date of cause of action for the recovery of possession and their dispossession from the land, therefore, the amendment petition is barred by law of limitation and the same should not have been allowed.

I find no force in the submission of learned counsel for the petitioners. The plaintiff has sought relief for declaration of title over the disputed land measuring five dhurs and also made prayer for permanent injunction. The plaintiff also filed a petition for injunction but in the meantime the plaintiff claimed that the defendants made construction over the land by encroaching upon the same. Therefore, I find that the amendment sought by the plaintiff has rightly been allowed by the court below. The principle governing the amendment of plaint is that if any amendment is necessary for the resolution of the dispute between the parties, the same should be allowed.

Having considered the facts aforesaid, I do not find any merit in this Civil Misc. petition and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

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