

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1151 of 2016

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Hari Narayan Purvey son of Late Ram Narayan Purvey resident of Mohalla-
Lakshmipur, under town Rosera, P.S.- Rosera, District- Samastipur.

.... Petitioner

Versus

1. Smt. Nilam Devi wife of Ramdhar Paswan resident of Village- Haripur, P.S.-
Dhandhaha, District- Purnea, at present resident of Mohalla- Lakshmipur, under
town Rosera, P.S.- Rosera, District- Samastipur.
2. Gauri Khatik son of Late Jangi Khatik resident of Mohalla- Lakshmipur, under
town Rosera, P.S.- Rosera, District- Samastipur.
3. Newa Khatik son of Late Jangi Khatik
4. Rajdeo Khatik son of Late Dudhnath Khatik
5. Laljee Khatik son of Dudhnath Khatik Residents of Village- Sahiyar Burj, P.s.-
Rosera, District- Samastipur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr. Ashok Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 04-04-2018

Heard both sides.

The petitioner has filed this Civil Miscellaneous petition
against the order dated 29.08.2016 passed in T.S. No.37 of 2007 by
learned Sub-Judge-1st, Rosera, Samastipur by which the petition of the
petitioner/plaintiff filed under Order 6 Rule 17 of the Code of Civil
Procedure has been dismissed.

The petitioner is the plaintiff. The plaintiff filed suit. The
defendant 2nd party is the tenant of the plaintiff and the defendant 1st
party is a sub-lettee of defendant second party. The plaintiff filed suit
for declaration of title over the suit land. The plaintiff filed
amendment petition for deleting the word 'settled' and to insert the



word 'owner' in different paragraphs of the plaint. The plaintiff inherited the entire property after the death of Laxmi Narayan Purbey. Further amendment is for mentioning of the plot but the learned Sub-Judge dismissed the amendment petition on the ground that by amendment, plaintiff wanted to change the nature of the suit.

Learned counsel for the petitioner submits that the amendment sought for is of formal nature. The plaintiff inherited the property owned by his ancestor and the same was not settled. Therefore, he wanted to delete the word 'settled' and insert the word 'owner'.

Mr. Ashok Kumar Mishra, learned counsel for the respondents however supported the order of learned Sub-Judge and submitted that the amendment petition has been filed at a very belated stage.

After having gone through the records and taking into consideration of the submissions of both sides, I find that the amendment is of formal nature and some words have wrongly been typed in different paragraphs of the plaint as well as area of the lands was wrongly mentioned. Order 6 Rule 17 of the C.P.C. vests power in the court to deal with the amendment and the same shall be considered at any stage of the suit if it is necessary and essential for determination of the real cause in dispute between the parties.



Therefore, I find that learned Sub Judge-1st, Rosera, Samastipur has committed jurisdictional error in rejecting the amendment petition.

Accordingly, the order dated 29.08.2016 passed in T.S. No.37 of 2007 is set aside and Civil Miscellaneous petition is allowed. Consequently, the amendment petition is allowed.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2018
Transmission Date	NA

