

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.469 of 2017

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1. Vishnu Mangal Thakur
 2. Vikash Thakur @ Vikash Kumar
 3. Vipin Thakur @ Vipin Kumar Thakur

.... Appellant/s

Versus

1. Shri Veer Mangal Thakur
2. Lallu Prasad Thakur
3. Ratneshwar Thakur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr. Durga Dand Jha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

2 25-09-2018

Heard both sides.

The petitioners have filed this Civil Misc. petition against the order dated 24.12.2016 passed by learned Sub Judge, Benipatti in Title Suit No. 185 of 2014 by which the learned Sub Judge allowed the petition of the plaintiff for amendment of the plaint.

The petitioners are the defendants. The plaintiff/respondent No.1 filed the suit for permanent injunction/ perpetual injunction against the defendants with regard to land mentioned in the schedule of the plaint. During the pendency of the suit, after commencement of trial, the plaintiff filed a petition under Order VI Rule 17 of the Code of Civil Procedure for amendment of plaint and to incorporate facts and add reliefs for declaration of



title and confirmation of possession. The learned Sub Judge by the impugned order, after hearing both sides, allowed the petition of plaintiff.

The learned counsel for the petitioners assails the order firstly on the ground that the amendment was brought after commencement of trial and in view of proviso to Order VI Rule 17 of the C.P.C. after commencement of trial/ commencement of hearing of the suit no amendment shall be allowed unless and until the party seeking amendment shows that even after due diligence he could not be able to incorporate the facts sought to be amended in the plaint but this element of due diligence has not been stated in the amendment petition and even then the amendment is allowed. It is further submitted that the plaintiff claimed title over the land by virtue of sale deed executed in the year 2009. The petitioners/ defendants purchased the aforesaid land in the year 1983 itself. Therefore, the amendment should have been rejected but I do not find any force in the submission of learned counsel for the petitioners.

Admittedly the plaintiff/ respondent No.1 filed the suit for permanent injunction/ perpetual injunction and stated the facts about the title over the land by virtue of sale deed. The plaintiff did not seek relief for declaration of title and confirmation



of possession. During the pendency of the suit, of course, after commencement of hearing of the suit the plaintiff brought the amendment petition to incorporate certain paragraphs stating about the valuation of the suit and story about purchase of land. Therefore, I find that the learned Sub Judge has rightly allowed the amendment petition. The basic object of the amendment is that all the amendments required for determination of the dispute between the parties shall be allowed. From the facts, it appears that the relief for permanent injunction is impliedly on the basis of declaration of title and, therefore, the amendment appears to be formal in nature and would not change the nature of the suit.

Accordingly, 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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