

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3255 of 2014

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Sambhu Sharan Son of Rajendra Prasad, resident of Village- Chirayabad,
Pergana- Sakahrabadi, P.S.- Jamalpur, Sub-Registry and District- Munger.

.... Petitioner

Versus

1. Ajay Kumar
2. Sanjay Kumar

Both Sons of Late Laxmi Prasad Sah, residents of Mohalla- Dalhatta,
Pergana- Munger, P.S.- Kotwali, District- Munger.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate

For the Respondent/s : Mr. Harshwardhan Sahay, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

4 22-02-2018 This writ application has been filed for quashing the

order dated 28.11.2013 passed by learned Subordinate Judge-II,

Munger in Title Suit No.92 of 2001 whereby and whereunder the

court below allowed the amendment in plaint.

2. Heard learned counsel for the petitioner and the
respondents.

3. The petitioner is defendant in Title Suit No.92 of
2001 filed by the respondents. The respondents filed the aforesaid
suit for declaration of title and confirmation of possession and also
for setting aside the sale deed dated 23.06.2001 and for permanent
injunction against the defendant-petitioner. The petitioner claims
the suit property by virtue of registered sale deed dated 23.06.2001



which was executed by original plaintiff Laxmi Sah in favour of the defendant. The petitioner, after said purchase filed Eviction Suit Nos.21 of 2001, 22 of 2001, 23 of 2001 and 24 of 2001 against the tenants who were occupying rooms on rent in the building and also for realisation of arrears of rent. The plaintiffs-respondents filed application for impleading them as defendants in the said eviction suit but the said petition was rejected on 07.10.2002. Thereafter the respondents filed Miscellaneous Case No.06 of 2003 before the District Judge, Munger for transferring all eviction suits to the court of Subordinate Judge-I where the present Title Suit No.92 of 2001 was pending but the said petition was rejected on 02.07.2003. Thereafter the plaintiffs-respondents filed an amendment petition which after hearing was allowed as per the impugned order.

4. The contention of learned counsel for the petitioner is that the proposed amendment is barred by law of limitation. The plaintiffs want to avoid the decree passed in the eviction suits. The plaintiffs have further sought relief that the decree passed in eviction suits have no binding effect on them. The learned counsel further submitted that the period of limitation for setting aside the decree is three years. The plaintiffs did not take step to amend the plaint immediately after passing of the decree, so they have no



right to amend the plaint after the prescribed period of limitation.

5. The learned counsel for the respondents, on the other hand, submits that the defendant had taken step for impleading them as party to the eviction suit but his prayer was rejected. The respondents are not party to the eviction suit and so the decree is not binding on them. The learned counsel cited ruling reported in **A.I.R. 2001 Supreme Court 699 (Ragu Thilak D. John Vs. S. Rayappan and others)**. The Hon'ble Apex Court at paragraph 5 has observed as follows:-

“The purpose and object of Order 6 Rule 17, CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.”

6. The respondents were not impleaded as party by the



court below considering the fact that the eviction suit was to be decided on the basis of relationship of landlord and tenant. The plaintiffs have amended the plaint only to this effect that the decree passed in the eviction suit in which they were not party to the suit is not binding on them. The court below while allowing the amendment has observed that the plaintiffs will not produce any evidence.

7. In view of above discussions, I find that the court below has not committed any jurisdictional error in allowing the amendment. This writ application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

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