

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.140 of 2016

=====

Kailash Prasad Agrawal

.... Appellant/s

Versus

1. Rajendra Prasad Agrawal
2. Chandrawati Devi
3. Most. Sunaina Devi
4. Santosh Kumar
5. Bishnu Kumar
6. Rekha Devi
7. Satha Devi
8. Seema Devi @ Nutan Devi
9. Raj Kumar Sah

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. R. K. P. Singh

For the Respondent/s : Mr. Kaushal Kumar

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

5 30-01-2018

Heard Sri R. K. P. Singh, the learned counsel for the petitioner, and Sri Kaushal Kumar, the learned counsel for the respondents Nos. 3, 4 and 5. The other respondents, in spite of service of notice, have not appeared.

The petitioner has filed this Civil Misc. petition to set aside the order dated 06.04.2016 passed by Munsif-I, Begusarai in Title Suit No. 121 of 1980.

The petitioner, Kailash Prasad Agrawal, is defendant 2nd set in Title Suit No. 121 of 1980. Rajendra Prasad Agrawal, respondent No.1, filed Title Suit No. 121 of 1980 against Baso Sah @ Baso Laheri for eviction on the ground of personal necessity and non payment of rent. Baso Sah appeared and filed written statement stating therein that he is the tenant of Kailash Prasad Agrawal and is paying rent to him. Thereafter, Rajendra Prasad Agrawal/plaintiff filed a petition to implead Kailash Prasad



Agrawal, the petitioner, as co-defendant. During the pendency of the suit Arun Kumar Rastogi and Vijay Kumar Rastogi purchased the suit land from Rajendra Prasad Agrawal, the plaintiff, on 23.12.1981. The legal heirs of Arun Kumar Rastogi and Vijay Kumar Rastogi filed petition under Order-I Rule 10(2) of the Code of Civil Procedure to implead them as co-plaintiff since Rajendra Prasad Agrawal did not pursue the suit diligently after selling the property in favour of Arun Kumar Rastogi and Vijay Kumar Rastogi. On such, the learned Munsif allowed the petition of the legal heirs of Arun Kumar Rastogi and Vijay Kumar Rastogi, respondents Nos. 2 to 8, vide order dated 07.01.2009. Kailash Prasad Agrawal filed CWJC No. 9144 of 2011 against the order dated 07.01.2009 passed by Munsif-I, Begusarai impleading the legal heirs of Arun Kumar Rastogi and Vijay Kumar Rastogi as co-plaintiff. This court vide order dated 28.07.2011 dismissed the writ petition and the legal heirs of Arun Kumar Rastogi and Vijay Kumar Rastogi are allowed to pursue the suit as plaintiff thereafter they filed a petition for amendment of the plaint on 05.11.2012 (Annexure-2). The defendants, including the petitioner, filed rejoinder to the petition stating that the suit is for eviction but by amendment the plaintiff wanted to change the nature of the suit by seeking relief of declaration of title and recovery of possession, which is barred by law of limitation. The plaintiff purchased the land from Rajendra Prasad Agrawal on 23.12.1981 and they fought litigation against Kailash Prasad Agrawal, the petitioner, claiming title over the suit land. Besides, the fact that the amendment would change the basic nature of the suit, i.e., from eviction to declaration of title and recovery of possession, the relief sought for by the plaintiff is barred by limitation but the



learned Munsif vide order dated 06.04.2016, without giving any reason, allowed the amendment petition. The petitioner, being aggrieved by the aforesaid order, moved this court by filing this Civil Misc. Petition.

The learned counsel for the petitioner, by referring the amendment petition (Annexure-2), submits that plaintiff wanted to incorporate and insert the facts that the plaintiff came in possession over the land by purchasing two dhur of land from north part of suit land through sale deed. Kailash Prasad Agrawal has no concern with the suit land and sale deed executed by Fulo Devi in favour of Kailash Prasad Agrawal is inoperative and without consideration, which was decided in Title Suit No. 119 of 1980 against which the Appeal No. 09 of 2005 is pending. The plaintiffs further prayed that in paragraph 10 of relief sought for be deleted and paragraph 10 be added for declaration of title, confirming the possession of plaintiff over the suit land and it is also declared that Kailash Prasad Agrawal has no semblance of title over the suit land and he in collusion with the S.D.O has collusively got the order of dispossession from the S.D.O. on 12.10.2011, which is illegal and inoperative.

The learned counsel for the petitioner submits that the suit is for eviction on the ground of personal necessity and non payment of rent but now, by amendment, the purchasers from original defendant, Rajendra Prasad Agrawal, wanted to change the nature of the suit and in place of eviction suit they sought for declaration of title and confirmation of possession. The relief for declaration of title is barred by limitation, as mentioned in Article 58 of the Limitation Act. In fact the suit land is not part of Title Suit No. 119 of 1980. It is submitted that learned Munsif has



committed jurisdictional error in allowing the amendment petition and the same is fit to be set aside.

On the other hand, Mr. Kaushal Kumar, the learned counsel for the respondents Nos. 3, 4 and 5, legal heirs of Vijay Kumar Rastogi, submitted that the learned Munsif has recorded the finding that amendment is of formal nature and the amendment was allowed only to avoid the multiplicity of suit.

Admittedly, Rajendra Prasad Agrawal filed the suit No. 121 of 1980 for eviction of sole respondent, Baso Sah @ Baso Laheri on the ground of personal necessity and non payment of rent. When Baso Sah stated in his written statement that he is tenant of Kaialsh Prasad Agrawal, the petitioner, and not the tenant of Rajendra Prasad Agrawal, the original plaintiff, then Rajendra Prasad Agrawal, the original plaintiff, filed petition to implead Kailash Prasad Agrawal as defendant No.2. On such, Kailash Prasad Agrawal was also made defendant in the suit but during the pendency of the suit Rajendra Prasad Agrawal sold the suit property to Arun Kumar Rastogi and Vijay Kumar Rastogi on 23.12.1981 but Arun Kumar Rastogi and Vijay Kumar Rastogi never appeared in the suit. After their death, their legal heirs filed a petition under Order-I Rule 10(2) of the C.P.C. to implead them as co-plaintiff and the same was allowed vide order dated 07.01.2009. That order was challenged by the defendant in CWJC No. 9144 of 2011 before this court and this court allowed the defendants Nos. 2 to 8 to contest the suit but at the same time held that the question of title shall not be looked into in a case for eviction on the ground of personal necessity and non payment of rent but thereafter the plaintiff filed the amendment petition.

From perusal of the amendment petition, it appears



that the plaintiff wanted to delete the relief as mentioned in paragraph 10 of the plaint with regard to the eviction of suit property on the ground of personal necessity and non payment of rent and wanted to substitute that the title of the plaintiff and their possession over the suit land be declared. Admittedly, the plaintiff, legal heirs of Arun Kumar Rastogi and Vijay Kumar Rastogi, wanted to change the nature of the suit. It is evident from the order of learned Munsif that he has not given any reason for allowing the amendment petition and besides the fact that the learned Munsif has committed jurisdictional error the order sans reasoning and the same is not sustainable.

Accordingly, this Civil Misc. petition is allowed and the order dated 06.04.2016 passed in Title Suit No. 121 of 1980 is set aside and the amendment petition is dismissed.

(Prabhat Kumar Jha, J)

BKS/-

U			
---	--	--	--

