

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.359 of 2016

=====

1. Asharfi Choudhary
2. Kuldeep Choudhary Both sons of Late Parmeshwari Choudhary resident of Village & P.O.- Rahta, P.S.- Kumarkhand, District- Madhepura.

.... Plaintiffs/Petitioners

Versus

1. Bhogi Sah
2. Gulabchand Sah Both sons of Nakchhedi Sah resident of Village & P.O.- Rahta, P.S.- Kumarkhand, District- Madhepura.

..... Defendants 1st set/Respondents 1st set

3. Shyamlal Choudhary S/o Late Shova Chand Choudhary
4. Kailash Chandra Choudhary son of Shyamlal Choudhary
5. Shambhu Choudhary
6. Sardeep Choudhary
7. Satish Choudhary son of Late Shiv Narayan Choudhary
8. Mosomat Dharamshila Devi wife of Late Shiv Narayan Choudhary
All are resident of Village+P.O.- Rahta, PS.- Kumarkhand, District- Madhepura.

.... Defendants 2nd set/Respondents 2nd set

=====

Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

4 04-01-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition for setting aside the order dated 28.04.2016 passed by Sub Judge I, Madhepura in Title Suit No.228 of 2011.

The petitioner is the plaintiff of Title Suit No.228 of 2011. Petitioner filed suit for declaration of title over the suit land mentioned in Schedule I of the plaint and also for declaration that the survey entry in respect of suit land with regard to Plot No.4549



and 4550 be declared illegal, null and void. During the pendency of the suit, after filing the written statement by defendants 2nd set, the petitioner filed petition under Order VI Rule 17 for amendment of the plaint and insertion of different paragraphs and facts in the plaint but the learned Sub Judge rejected the amendment petition of the petitioners by the impugned order holding that by amendment petitioners wanted to introduce new facts which have not been incorporated in the plaint and it would change the nature of the suit. Being aggrieved by the aforesaid order, the petitioners preferred this civil miscellaneous petition.

The learned counsel for the petitioners submits that the petitioners seek declaration of title over 2 dhurs of land of plot no.4549 carved out from old khesra no.1985. Many other plots such as plot no.4545, 4547, 4548, 4549, 4551 have been carved out from old plot no.1985. The plaintiff got some land by virtue of sale deed executed by Mangal Lal Sah and the plaintiff got further lands through exchange. During the pendency of the suit, the petitioners have been dispossessed from 2 dhurs of land and, therefore, the petitioner filed the petition mentioning the entire facts as also sought for additional relief for recovery of possession but the learned Sub Judge has illegally rejected the amendment petition holding that the same would change the nature of the suit.



On the contrary, Mr. Shashi Dhar Jha appearing on behalf of the respondent Nos.3 and 4, the contesting defendants submitted that the petitioner has not made his brother as defendant. In fact, the defendant Nos.3 and 4 entered into a compromise with the brother of the petitioner and it was agreed that 2 ½ dhurs of land adjacent to plot no.4549 shall remain vacant. The petitioner got the land from the brother of the plaintiff.

The only question arises for consideration as to whether the order rejecting the petition of amendment suffers from any illegality or jurisdictional error?

On perusal of the amendment petition, it appears that petitioner filed amendment petition for incorporating para 16A and 16B after para 16, similarly wanted to incorporate para 17(A) and 17(B) after para 17 of the plaint. Besides, petitioner wanted amendment of schedule IA after schedule A for which description of the land of new plot no.4549 area 2 decimals was given. From perusal of the amendment petition, it appears that petitioner described the facts that from old plot no.1985, new plot nos.4545, 4546, 4547, 4548, 4549, 4551 were carved out of different areas. The petitioners claimed that he got the land through sale deed and exchange but the defendants encroached upon the land and constructed house.



From perusal of the amendment petition, it appears that the plaintiff stated the facts that from plot no.1985, different plot nos.4545, 4546, 4547, 4548, 4549, 4551 of different areas were carved out. The case of the plaintiff that plot no.4549 area 8 dhurs was in his possession but during the revisional survey, 2 dhurs land of plot no.4549 was recorded in the name of defendants 2nd set and on the basis of the entry made in revisional survey, the defendant encroached upon the lands of plot no.4549. Petitioner filed amendment petition mentioning the entire facts and seeks relief for declaration of title and recovery of possession over 2 dhurs of land of plot no.4549 but the learned Sub Judge rejected the petition on the ground that plaintiff-petitioners wanted to incorporate new facts which would change the nature of the suit.

The principle with regard to dealing with amendment petition is that all the facts which are required to be brought on record for decision of the core disputes between the parties should be allowed unless the same is barred by law or the same may work an injustice to other side.

Admittedly, the suit is at the very initial stage. The amendment sought for requires to be incorporated in order to decide the dispute between the two sides and, therefore, I find that the amendment is required to be incorporated and the learned sub



Judge has committed jurisdictional error in rejecting the petition.

Accordingly, the order dated 28.04.2016 passed in Title Suit No.228 of 2011 is set aside. The civil miscellaneous petition is allowed.

It goes without saying that the contesting defendant nos.3 and 4 may file additional written statement, if they wish so.

(Prabhat Kumar Jha, J)

Saurabh/-

U		T	
---	--	---	--

