

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16097 of 2012

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Baliram Sharma S/O Late Deo Nandan Sharma, resident of Village - Dilawapur,
Sobardhan, P.O. - Mathurapur, P.S. Bidupur, District – Vaishali.

.... Petitioner

Versus

1. Devendra Singh S/O Late Lolin Singh, R/O Village - Dilawarpur Gobardhan,
P.O. Mathurapur, P.S. - Bidupur, District – Vaishali.
2. Rajesh Singh S/O Devendra Singh R/O Village - Dilawarpur Gobardhan, P.O.
Mathurapur, P.S. - Bidupur, District – Vaishali.
3. Kamlesh Singh @ Nanhaku Singh S/O Devendra Singh R/O Village -
Dilawarpur Gobardhan, P.O. Mathurapur, P.S. - Bidupur, District – Vaishali.
4(i). Sushma Devi Wife of Late Rana Sharma
(ii). Monu Sharma S/o Late Rana Sharma
(iii) Vivek Kumar S/o Late Rana Sharma
(iv) Khushboo Devi D/o Late Rana Sharma
5. Surendra Sharma S/o of Late Deo Nandan Sharma
6. Tara Devi D/o Late Deo Nandan Sharma
All R/o village Dilawarpur Gobardhan, P.O.- Mathurapur, P.S.- Bidupur, Distt.
Vaishali.

.... Respondents

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Appearance :

For the Petitioner : Mr. Chandra Kant, Advocate
Mr. Manish Chandra Gandhi, Advocate
For the Respondents : Mr. Ratan Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-04-2018

This writ application has been filed for setting aside the order dated 09.07.2012 passed by learned Munsif-I, Vaishali at Hajipur in Title Suit No.82 of 1999 whereby and whereunder the learned court below rejected the petition of this petitioner giving opportunity to examine some of his witnesses.

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



3. The petitioner filed the aforesaid suit for declaration of his title over the land mentioned in Schedule I of the plaint. The defendants appeared and filed written statement. During the pendency of the suit, the defendants dispossessed the plaintiff on 21.08.2005 forcibly from the land in dispute and erected some structure over the same. The plaintiff filed amendment petition for adding one more relief as regards recovery of possession over the said land. The amendment petition was allowed on 23.02.2006. The defendants filed Civil Revision No.557 of 2006 before this court which was dismissed on 10.11. 2008. Thereafter the petitioner filed a petition under Order 26 Rule 9 and 10 of C.P.C. for taking evidence of Pleader Commissioner which was rejected on 22.02.2010. The petitioner filed C.W.J.C. No.15162 of 2011 before this court which was dismissed on 12.11.2011. After the closing evidence of both sides, when the case was pending for argument, the petitioner filed a petition for adducing oral evidence in the light of amendment on the point of his dispossession from the suit property. The said petition has been rejected as per impugned order.

4. Learned counsel for the petitioner submitted that the court below has erred in holding that the petition to adduce evidence has been filed at a belated stage. The case was closed and when it was pending for argument, the petitioner has filed the petition. The suit



remained pending for long time on account of filing of Civil Revision No.557 of 2006 by the defendant and C.W.J.C. No.15162 of 2011 by this petitioner before this court. The plaintiff wants to adduce evidence only on limited point in order to prove his case of dispossession in the light of subsequent event for which the plaint was amended.

5. Learned counsel for the respondents, on the other hand, submitted that the amendment was allowed in the year 2005 and after long delay when the argument was going on, the petitioner filed a petition and so the court below has rightly rejected the amendment petition.

6. On perusal of the impugned order, I find that the court below has rejected the petition observing that the said petition was filed at the time of argument. It appears that the amendment was allowed on 23.02.2006 against which the respondent-defendant filed Civil Revision No.557 of 2006 before this court. The said civil revision remained pending for two years and it was dismissed on 10.11.2008. The petitioner had also filed C.W.J.C. No.15162 of 2011 against the order dated 22.02.2010 which was also dismissed on 12.11.2011. Thus, I find that the case remained pending for no fault of the parties. There was no stay order either in civil revision and civil writ pending before this court and on account of



pendency of civil revision and civil writ, the court below did not proceed. The plaint was amended on account of dispossession of plaintiff from the suit premises. The petitioner wants to adduce evidence only on limited point which relates to his dispossession. The observation of court below that the petitioner filed petition for adducing evidence only to prolong the disposal of the suit is against the material on record. The case remained pending only on account of filing of civil revision as well as civil writ.

7. In view of above discussions and for the ends of justice, the impugned order rejecting the prayer of petitioner to adduce evidence is set aside subject to payment of cost to the tune of Rs.3,000/- to the respondent-defendant before the trial court.

8. The court below is directed to give an opportunity to the petitioner as well as the defendants within a time frame to adduce evidence on the point of dispossession only. This writ application is accordingly allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.04.2018
Transmission Date	

