

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20719 of 2011

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Dewesh Chandra Prasad son of late Ramesh Chandra Prasad, resident of Mohalla-
Dahiyawan, P.S. Chapra, District- Saran.

.... Petitioner/s

Versus

1. Ashok Kumar Sinha.
 2. Smt. Poonam Sinha wife of Sri Ashok Kumar Sinha, both respondent nos. 1 and 2 care of Sri Sudhir Kumar, Road No.- 14, R.M.S. Colony, Kankarbagh, Patna.
 3. Praveen Kumar Secretary, "Adhinav Niwas" Sikandar Manjil, Fraser Road, Patna at present Athinaw Awas Gola Road, Danapur, P.S.- Danapur, District- Patna.
 4. Smt. Krishna Devi wife of Arun Kumar Das, 148, Rental Flat Road No.3, Kankarbagh, Patna- 20.
 5. Sri Chandra Mani Dutta son of Late Rama Prasad Dutta, resident of kathi Madhubani, District- Madhubani.
 6. Smt. Maya Dutta wife of Chandra Mani Dutta, resident of Rathi Madhubani, P.S. & District- Madhubani.
 7. Shri Kaushal Kumar Das, Secretary, Rangkarmi Sahkari Grih Nirman Samiti, Khajpura, P.S.- Gardanibagh, District- Patna.
- ...Defendant/Respondent 1st set.
8. Jai Hind Prasad son of late Kesho Singh, resident of Mohalla- Linapur Mirzapur Nawadah), P.S.- Nawadah, District Nawadh at present posted in Indian Bank, Patna Main Branch Biscomaun Building, P.S.- Gandhi Maidan, District- Patna.
 9. Manju Devi wife of Chandra Mani Prasad, resident of village- Kulna, P.S.- Akbarpur, District- Patna at present resident of Mohalla- Kurji Balupar, P.O.- Sadakat Aashram, Kurji Balupar, P.S.- Digha, District- Patna.

....Plaintiffs/Pro forma Respondents IInd set.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Dwivedi, Advocate.

For the Respondent/s : M/s Pankaj Kumar Sinha and
Dharmendra Kumar Paswan, Advocates.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-08-2018

Petitioner before this Court is one of the plaintiffs of
Title Suit No. 27 of 2000 pending in the court of Munsif, Danapur
(Patna). He has filed this application for setting aside the order dated
05.09.2011 passed by the court below whereby and whereunder his



amendment petition was rejected.

2. Heard both sides and perused the record.

3. It appears that the petitioner filed an amendment petition on 23.06.2011 praying therein to amend the plaint which necessitated on account of subsequent encroachment made by the defendants-respondents. The petitioner-plaintiff has mentioned the description of suit property in the schedule given at the foot of the plaint. According to petitioner, the defendants during pendency of the suit, have encroached some more land to the extent of 9 feet 6 inch. On account of said encroachment, the petitioner wants to make correction in the area encroached by the respondents-defendants and also in the boundary as well as in sketch-map given in the plaint. In course of argument, it has been submitted that the respondents-defendants have admitted encroachment and have compromised the case with co-plaintiffs and removed the encroachment from the suit premises. In support of his contention, a supplementary affidavit has been filed by the petitioner. The learned counsel for the respondents on the other hand submitted that the proposed amendment has been filed after a delay of 11 years and if allowed it will change the nature of suit. The court below while rejecting the prayer of plaintiff-petitioner has observed that he has not produced any documents in



support of subsequent event. This fact is against the material on record. In the amendment petition, the petitioner has asserted that during the pendency of the suit, the respondents-defendants have encroached some more land. By proposed amendment, the petitioner wants only to increase the area of disputed land which has been subsequently encroached by the defendants-respondents during the pendency of the suit. The cause of action against the defendants-respondents is same and it does not change the nature of suit

4. In view of above facts, the impugned order refusing to amend the plaint is set aside and this application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.08.2018
Transmission Date	N/A

