

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4114 of 2014

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Amod Kumar Choudhary Son Of Sri Baleshwar Prasad Choudhary, Resident of Village + P.O. Rashidpur, P.S. - Bachhwara, District – Begusarai.

.... Petitioner

Versus

Krishna Chandra Jha Alias Babloo Jha, Son Of Chandra Bhushan Jha Alias Loos Jha, Resident of Village + P.O. Rashidpur, P.S. - Bachhwara, District – Begusarai.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. J.S. Arora, Sr. Advocate
Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-05-2018

Heard learned counsel for the petitioner and perused the record.

2. This writ application has been filed for quashing the order dated 30.09.2013 whereunder the amendment petition of the petitioner to amend the plaint was rejected. The matter was earlier heard by this court and the writ application was dismissed on 15.02.2016. The petitioner filed Civil Review No.273 of 2016 which was allowed as per order dated 16.11.2016 and the order passed in the writ application was recalled and the writ application was ordered to be listed under the heading “For Admission”. Accordingly, respondent was noticed and after service of notice, this writ application has been heard.

3. It has been submitted that the petitioner filed Eviction



Suit No.05 of 2005 for eviction of respondent (defendant) from the suit premises. The defendant was inducted tenant temporarily as his residential house fell down during the rainy season. The defendant, as agreed earlier, did not vacate the suit premises in October, 2004 and he requested to extend the time till April, 2005. The defendant as per agreement paid rent for few months and after April, 2005 he did not pay rent and accordingly the suit was filed. The defendant appeared and denied the relationship of landlord and tenant. He claimed possession over the suit premises since last 70 years from the time of his grandfather as privileged tenant. It appears that during the pendency of the suit, the defendant obtained 'Basgit parcha' vide Case No.36/2005-2006 from the circle office. The defendant in his written statement asserted his case as regards his own right on the basis of 'Basgit parcha'. In view of assertion made in the written statement, the plaintiff filed amendment petition praying therein to add the State of Bihar and other revenue authorities as defendants 2nd party. Besides that, the plaintiff sought relief with respect to 'Basgit parcha' as forged and fabricated document. The said amendment appears simple in nature and does not change the nature of the suit and it necessitated on account of averment made in the written statement by the defendant whereunder he has asserted that he has obtained 'Basgit parcha' during the pendency of the suit.

4. The learned counsel for the petitioner referred paragraph



6 of the decision reported in 2002 (2) P.L.J.R (SC) 187 (Prem Bakshi & Ors. Vs. Dharam Dev & Ors.) in which the Hon’ble Apex Court has observed as follows:

“.....It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea, which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party.”

Thus, I find that the petitioner only wanted to bring to the notice of the court, the subsequent facts as regards acquiring interest by the defendant in the suit property on the basis of ‘Basgit Parcha’ during the pendency of the suit.

5. In view of above facts the impugned order refusing amendment is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.05.2018
Transmission Date	

