

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22269 of 2014

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1. Rukmini Devi, wife of Bala Jha
 2. Akhilanand Jha, son of Bala Jha, both are resident of Village- Rampurwa Tola, Ranipur, P.O.- Brindavan Ashram, P.S.- Chanpatiya, District- West Champaran.
- Petitioner/s

Versus

1. Hira Jha, son of late Gulab Jha @ Hari Krishna Jha, resident of Rampurwa Tola, Ranipur, P.O.- Brindawan, P.S.- Chanpatia, District- West Champaran.
...Defendant/Defendant 1st set.
 2. Shambho Mahto
 3. Bilash Mahto
Both are son of Kalcharan Mahto.
 4. Manoj Kumar
 5. Varun Kumar
Both are son of Bilash Mahto, Resident of Mauza- Rampurwa Tola, Ranipur, P.O.- Brindawan, P.S.- Chanpatiya, District- West Champaran.
Plaintiffs/Defendant 2nd set.
 6. Banhu Mahto
 7. Nanhu Mahto
 8. Sanhu Mahto
 9. Bhikhari Mahto
All are son of late Saryug Mahto, all are resident of Mauza Rampurwa Tola, Ranipur, P.O.- Brindawan, P.S.- Chanpatiya, District- West Champaran, at present resident of Mauza Maniharwa, P.S.- Pokhariya, District- Birganj, Nepal.
Defendants/Defendants 3rd set
 10. Bikau Mahto, son of late Jagan Mahto, resident of Mauza Rampurwa Tola, Ranipur, P.O.- Brindawan, P.S.- Chanpatiya, District- West Champaran.
 11. Bilai Devi, D/o late Jagan Mahto, wife of Bhagat Mahto, resident of Mauza- Parswa, P.O.- Paraswa, P.S.- Birganj, Nepal.
Defendants/Defendants 4th set
 12. Chotelal son of Jagdav Mahto, resident of Mauza Rampurwa Tola, Ranipur, P.O. Brindawan, P.S.- Chanpatiya, District- West Champaran.
Defendant/Defendant 5th set
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Appearance :

For the Petitioner/s : Mr. Bhagya Narayan Jha, Adv.
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 26-06-2018

The petitioners before this Court are defendants of Title
Suit No. 18 of 1997 pending in the court of Additional Munsif-VII,
Bettiah. They have filed this application for setting aside the order



dated 28.02.2014 whereby and whereunder the amendment petition filed by the petitioners was rejected.

2. Heard learned counsel for the petitioners.

3. The respondents 2nd party filed the aforesaid suit for declaration of their right, title and possession over the land mentioned in schedule-II of the plaint. The plaintiffs further sought relief to declare the order dated 06.08.1996 passed in a proceeding under Section 145 Cr.P.C. as wrong and illegal and also to restrain the petitioners and other defendants from causing any interference in their possession over the suit property. The suit was filed on 22.01.1997. The petitioners along with other defendants appeared and filed written statement on 16.09.1998. The petitioners filed an amendment petition on 17.04.2014 for amending the written statement which after hearing was rejected by the court below.

4. From perusal of amendment petition it appears that the petitioners have alleged that during the pendency of the suit, the plaintiffs illegally constructed roof over some of the portion of suit land in between 15th July to 10th August 2013 in absence of the petitioners. In order to recover possession, the petitioners have sought relief to add one paragraph disclosing cause of action for recovery of possession after demolishing the illegal construction made by the plaintiffs. The copy of plaint is annexed with this writ application



which shows that the plaintiffs have asserted their right, title and possession over the suit property. At para 11 of the plaint, the plaintiffs have specifically asserted their right, title and possession over the suit land. The defendants have not denied the assertion of the plaintiffs specifically in their written statement. In amendment petition, the petitioners have prayed for confirmation of their right, title and possession over the suit land and simultaneously they want to add prayer of recovery of possession. These two reliefs are contradictory to each other. The court below while rejecting the amendment petition, has also observed that the defendants have made contradictory pleading in their amendment petition.

5. In view of above facts, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.06.2018
Transmission Date	

