

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12835 of 2010

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1. Mundrika Giri S/O Ram Mangal Giri R/O Village & P.O.- Paharpur, P.S.- Garkha, Distt.- Saran
 2. Shankar Giri S/O Ram Mangal Giri R/O Village & P.O.- Paharpur, P.S.- Garkha, Distt.- Saran
 3. Ram Mangal Giri S/O Late Doma Giri R/O Village & P.O.- Paharpur, P.S.- Garkha, Distt.- Saran
 4. Chait Mangal Giri S/O Late Doma Giri R/O Village & P.O.- Paharpur, P.S.- Garkha, Distt.- Saran

.... Petitioner/s

Versus

1. Sheojee Giri S/O Ram Nath Giri R/O Village & P.O.- Paharpur, P.S.- Garkha, Distt.- Saran
2. Sakaldeep Rai S/O Muri Rai R/O Vill.- Pirona Tole Chainpur, P.O.- Paharpur, P.S.- Garkha, Distt.- Saran

Defendants 1st set / Respondents 1st set.

3. Most. Mandeï Kuar W/O Ramdeo Sah R/O Village & P.O.- Paharpur, P.S.- Garkha, Distt.- Saran.

Defendant 2nd set / Respondent 2nd set.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Advocate
Mr. Praveen Prabhakar, Advocate
For the Respondent/s : Mr. Vijay Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-07-2018

Plaintiffs of Title Suit No.312 of 2002 pending in the Court of Sub Judge-I, Chapra has filed this application for quashing the order dated 14.05.2010 whereby and whereunder the amendment petition filed on their behalf was rejected.

2. Heard learned counsel for the petitioners as well as the respondents.

3. The petitioners have filed the said suit for declaration of their title over the land mentioned in schedule-1 of the plaint. The plaintiffs have further sought relief to declare the registered sale deed dated 02.11.2001 alleged to be



executed by defendant 2nd set in favour of defendant Ist set with respect to suit property as illegal, inoperative and void. After closure of evidence of both the sides, the petitioners filed an amendment petition alleging that during the pendency of the suit, the defendants forcibly took possession and constructed a Pucca house. It has been submitted that on account of making construction over the suit land, it has become necessary for the petitioner to amend the plaint seeking relief for recovery of possession. The learned court below without considering the merit of the amendment petition has rejected the petition. The proposed amendments do not prejudice the other side as the suit has to be decided on the basis of evidence which has already been recorded.

4. The learned counsel for the respondents on the other hand submits that the suit was filed in the year 2002 and after seven years of filing of suit the plaintiffs filed the amendment petition at the stage of argument to bring the new facts and so the same has been rightly dismissed.

5. On perusal of impugned order and documents on record, I find that the suit was initially filed for declaration with respect to a registered document. The defendants in their written statement have denied the title and possession of the plaintiffs. According to the petitioners, the defendants forcibly constructed the house over the suit land which necessitated the petitioners to file amendment petition to seek one more relief as regards recovery of possession. In this regard I would refer to the decision in the case of Charan Das v. Amir Khan (AIR 1921 PC 50). The suit in that case was for declaration of a right of pre-emption. No claim for possession of the property was made. With regard to part of the lands the plaintiffs themselves claimed to be in possession on their own account. Objection was taken to the maintainability of the suit on the ground of S.42 of the Specific Relief Act. Ultimately the prayer for amendment of the plaint was made.



Their Lordships of the Judicial Committee held that the court below was right in holding “however defective the frame of the suit may be, the plaintiffs’ object was to pre-empt the land; their cause of action was one and the same, whether they sued for possession or not.”

6. In the case in hand, I find that only fault of the petitioners was that they had not prayed for recovery of possession at the earliest stage. The amendment appears simple in nature and it does not prejudice the respondents in any way as the claim for possession is not making out a new case but is based on the same cause of action namely the title of the plaintiffs in any way.

7. In view of above facts, the impugned order refusing to amend the plaint is set aside and this writ application is allowed subject to payment of cost of Rs.3,000/- to the contesting defendants before the court below. It is however made clear that it shall be open for decision by the court below, in case, the defendants so desire they would be given chance of filing an additional written statement and the parties may be allowed to lead further evidence if at all necessary on the question of possession.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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