

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.604 of 2016

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1. Shambhu Sah @ Shambhu Nath Sah Son of Ganesh Sah resident of village Jamunaha Bazar, P.O. Chhitauna, P.S. - Kateya, District - Gopalganj.

.... Appellant/s

Versus

1. Kishori Sah Son of Late Dinanath Sah resident of village Jamunaha Bazar, P.O. Chhitauna, P.S. - Kateya, District - Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vijay Shankar Shrivastava

For the Respondent/s : Mr. Sanjay Kumar Pandey No.5

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 12-10-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition for setting aside the order dated 28.06.2016 passed by learned Additional Munsif-V, Gopalganj in Eviction Suit No. 19 of 2005 whereby the learned court below rejected the petition of the petitioner for amendment of plaint.

The relevant facts can be summarized as follows:-

The petitioner is the plaintiff. The petitioner filed Eviction Suit No. 19 of 2005 in the court of learned Munsif, Gopalganj against defendant/ respondent for eviction from a house/ room situated under Khata No. 17, plot No. 167, area 1 ½ dhur on the ground of default in payment of rent and personal necessity. The defendant appeared and categorically denied the relationship of landlord and tenant and claimed that the defendant is title holder of the house and land. The plaintiff and defendant examined their witnesses. The plaintiff filed a petition under Order VI Rule 17 of the Code of Civil Procedure for seeking amendment of relief portion as



1(a) to declare the title of the plaintiff on the suit property and also recovery of possession of suit property. The petition of amendment was contested by the defendant on the ground that the amendment petition is filed at the stage of argument when the suit is pending for last 11 years and the amendment is barred by proviso of Order VI Rule 17 of the C.P.C. The plaintiff has not stated the facts as to why the amendment was not sought at the stage of trial. It is purely a suit for eviction and amendment sought for would change the nature of the suit. The learned Munsif after hearing both sides held that amendment sought for is at the very belated stage and that would change the nature of the suit. It is further held that in view of proviso of Order VI Rule 17 of the C.P.C. the plaintiff could not be able to explain and set forth the reasons for not bringing such amendment at the earlier stage in spite of due diligence and consequently rejected the petition of the plaintiff/ petitioner for amendment of the plaint.

The one and only question arises for consideration whether the amendment sought for by the plaintiff for seeking relief of declaration of title and recovery of possession in a suit for eviction that too at the stage of argument can be allowed and the order of learned Munsif suffers from any illegality or jurisdictional error?

The learned counsel for the petitioner submits that admittedly the suit is for eviction but the defendant put forth the evidence denying the relationship of landlord and tenant and claimed that they are owners of the property. The plaintiff and defendant have examined their witnesses and thereafter the plaintiff filed the petition for amendment. It is further submitted that amendment of plaint is required for determination of title. The provision as contained in Order VI Rule 17 of the C.P.C. vests power in the court that all such amendments which are necessary for the determination of dispute



between the parties shall be allowed. It is further submitted that even in the eviction suit if the plaintiff seeks amendment of plaint for seeking relief of title and recovery of possession the same should have been allowed in order to avoid multiplicity of the suit. In support of his submission the learned counsel for the petitioner placed his reliance on the judgement of this Court reported in **AIR 2008 Patna 54 (Murari Prasad & Ors v. Indu Devi & Ors)** and on the judgement of the Supreme Court reported in **AIR 2004 SC 4102 (Pankaja & anr. V. Yellapa (D) by L.Rs and Ors)**. The plaintiff has already examined his witnesses and produced documents showing his title and the plaintiff does not intend to examine any further witness.

As per contra, the learned counsel for the respondent submits that proviso to Order VI Rule 17 of C.P.C. clearly bars such amendment which a party may bring before beginning of hearing of the suit. The suit is at the stage of argument as evidence of both sides have already been concluded and if the amendment is allowed there shall be de novo trial of the suit.

On consideration of submission of both sides it is very relevant to reproduce the provision as contained in Order VI Rule 17 of the Code of Civil Procedure which reads as follows:-

“Amendment of pleadings-

The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party



could not have raised the matter before the commencement of trial.”

On bare perusal of the aforesaid provision it is abundantly clear that the court is vested with all powers to allow such amendment at any stage of the suit if such amendment is required for determination of the dispute between the parties. Of course, the proviso of Order VI Rule 17 of the C.P.C. has been brought about by amendment in the year 2005 which says that court shall not allow such amendment after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The suit is for eviction and the plaintiff has asserted that he has got title over the land. There was an agreement of tenancy between the plaintiff and defendant. The defendant also adduced evidence denying the relationship of landlord and tenant and put forth their claim that they have got title over the disputed land and on these facts the plaintiff thought it proper to seek amendment of relief for declaration of title and recovery of possession. In the eviction suit the question of title can be incidentally looked into but the court cannot record any finding with regard to title. If the plaintiff at any stage of suit for eviction feels that on the basis of evidence brought on record the relief is required to be amended, I am of the view that in the interest of justice and in order to avoid multiplicity of litigation such amendment should have been allowed avoiding the situation driving the plaintiff to file another suit for the same relief. The plaintiff does not want to bring any new facts after beginning of the trial or at the stage of argument of the case. The plaintiff simply wants to mould the relief by adding the relief for declaration of title and recovery of possession. Therefore, the proviso, in my view, cannot preclude a party to amend the relief of



the suit at any stage of the suit. The proviso bars the amendment to incorporate new facts in the plaint or written statement after start of hearing of the suit without showing due diligence for not bringing those facts at the earlier stage of the suit. In the case of **Pankaja & anr. V. Yellapa (D) by L.Rs and Ors** reported in **AIR 2004 SC 4102** it has been held that addition of new relief can be allowed in order to avoid multiplicity of the suit.

Considering the facts aforesaid, I find that the learned Sub Judge has committed jurisdictional error in rejecting the petition of amendment of the plaintiff. Accordingly, the order dated 28.06.2016 passed by learned Additional Munsif-V, Gopalganj in Eviction Suit No. 19 of 2005 is set aside. The amendment petition is allowed. Thus, this Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
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