

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1355 of 2016**

=====

Bijay Sah Son of Sri Jagdish Sah Resident of Deva Shree Apartment, Rampur
Nahar Tanki, P.S.- Bahadurpur, District- Patna.

... .. Petitioner

Versus

1. Smt. Bachchi Devi Wife of Late Ram Chandra Mahto
2. Sri Umesh Mahto son of Late Ramchandra Mahto Both resident of Mohalla-
Shahganj, Ramchandra Mahto Market, P.S.- Sultanganj, District- Patna.

... .. Respondents

=====

Appearance :

For the Appellant/s	:	Dr. Anand Kumar, Advocate Mr. Bipin Kumar @ Deo, Advocate
For the Respondents	:	Mr. Ravi Bhushan Prasad-1, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT**

Date : 25-10-2018

Heard both sides.

2. The petitioner filed this civil miscellaneous petition against the order dated 24.05.2016, passed in Title Eviction Suit No.7 of 2011 by which the petition filed by the petitioner to make amendment in WS has been rejected.

3. Petitioner is the defendant in the court below. The plaintiff filed the suit for eviction of the suit premises. During the pendency of the suit, the petitioner-defendant filed petition under Order VI Rule 17 of the CPC to seek amendment in WS and add para 16(A) that during pendency of the suit, Katra No.3 and 5 from the western side of the passage of the market was in occupation of the tenant Ravi Kumar who is running his business in the name



and style of Malti Fashion and in Katra No.5, Royal Computer was running were vacated in the month of June, 2013. Subsequently Katra No.3 has been let out to another tenant, Ashif and Shop No.5 was let out to Md. Niyazul Haque. Similarly Katra No.6, which was vacated by another tenant has been used by the plaintiff as Lodge and, therefore, the plaintiff is not required the suit premises for his personal necessity but the learned Sub-Judge-Ist, Patna City rejected the petition of amendment.

4. The learned counsel for the petitioner submits that the petitioner wanted to amend the WS and insert the facts and circumstances occurred and happened during the pendency of the suit. Three shops of the plaintiffs were vacated but the plaintiffs let out all the three shops to different persons and, therefore, the plaintiffs have got no personal necessity.

5. The learned counsel for the respondents-plaintiffs submitted that the suit is of the year 2011 but the defendant on one pretext or the other wanted to linger the suit.

6. Having considered the submissions of both sides and on perusal of the order impugned as well as the petition seeking amendment in the WS, I find that the defendant wanted to incorporate those facts in WS which happened during the pendency of the suit. Three shops belonging to the plaintiffs were



vacated by tenants and the plaintiffs let out those shops to different persons. Admittedly the suit is filed on the ground of personal necessity and default in payment of rent as well, therefore, I find that the amendment sought for by the defendant is necessary for just decisions of the suit and the Sub-Judge has illegally rejected the petition of amendment filed by the petitioner in WS. Thus, I find that the learned Sub-Judge, Ist, Patna City has committed jurisdictional error in dismissing the amendment of the petitioner. Accordingly, the order dated 24.05.2016, passed in Title Eviction Suit No.7 of 2011 is set aside. Amendment petition filed by defendant is allowed and this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2018
Transmission Date	NA

