

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.341 of 2017

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1. Vijay Mishra S/o Late Ramashankar Mishra, Resident of Village-Bedauli, P.O. Badaka manjha, P.S. Mairawa, District Siwan.

.... Appellant/s

Versus

1. Rajan Mishra.
2. Bhajan Mishra.
3. Mukesh Mishra.
4. Rakesh Mishra, All S/o Late Ram Narain Mishra, All are Resident of Village- Bedauli, P.O.- Badaka Manjha, P.S. Mairawa, District- Siwan.
5. Vinod Kumar Mishra.
6. Rajesh Kumar Mishra.
7. Prabha Shankar Mishra.
8. Sudhakar Misha, All S/o Late Rama Shankar Mishra.
9. Mala Devi.
10. Geeta Devi, Both D/o Late Rama Shankar Mishra, All are Resident of Village- Bedauli, P.O.- Badaka Manjha, P.S. Mairawa, District- Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Kant

For the Respondent/s : Mr. Vijay Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

5 04-10-2018

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 08.04.2016 passed in Title Suit No. 150 of 1999 by learned Munsif-II, Siwan by which the petition of the petitioner/ plaintiff for allowing him to adduce evidence with regard to the amendment brought in the plaint has been dismissed.

The learned counsel for the petitioner submits that during the pendency of the suit, after closing of the evidence the plaintiff, the petitioner/ plaintiff filed amendment petition which



was dismissed on 12.02.2001. The petitioner filed C.R. No. 400 of 2001 and this court vide order dated 17.10.2001 allowed the C.R. and set aside the order of dismissal of amendment petition. Consequently, the amendment petition was allowed. Since the evidence of the petitioner/ plaintiff was closed and the evidence of defendants was going on the petitioner could not bring any evidence on the point of amendment brought about in the plaint. The evidence of defendants was closed on 11.08.2014. Thereafter, the petitioner filed petition to allow him to adduce evidence on the facts brought on record by way of amendment but the learned Munsif dismissed the same erroneously holding that the petition was filed at a very belated stage.

The learned counsel for the petitioner submits that since the amendment was allowed but the evidence of defendants was going on the petitioner had no occasion to adduce evidence on the point of amendment and the learned Munsif without appreciating the facts rejected the petition of the petitioner.

The learned counsel for the respondents in support of the order submits that there is no scope for interference in the order impugned as after 16 years from the date of allowing the amendment petition the petitioner filed petition for adducing the evidence but on perusal of the records, I find that the petitioner has



clearly stated that when the amendment was allowed by this court on 17.10.2001, vide order passed in C.R. No. 400 of 2001, the evidence of the defendants was going on. The evidence of defendants was closed on 11.08.2014 and immediately thereafter the petitioner/ plaintiff filed petition to allow him to bring the facts brought about in the plaint by way of amendment and if the petitioner is not allowed to bring evidence on the amended facts by adducing evidence it will cause injustice and irreparable loss to the plaintiff and the plaintiff would not be able to prove his case.

Thus, I find that the learned Munsif has committed jurisdictional error in dismissing the petition of the petitioner for allowing him to adduce evidence on the point of amended facts brought about in the plaint by way of amendment. Accordingly, the order dated 08.04.2016 is set aside and the petitioner is allowed to adduce evidence. Consequently, this Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

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