

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9149 of 2014

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Ram Naresh Pandey S/o Late Ramprit Pandey, resident of village - Adhwara
Chintamani P.O. Susta, Mohammadpur, P.S. Sakra, District - Muzaffarpur.

.... Petitioner

Versus

1. Ramlav Pandey S/o Late Bujhawan Pandey, resident of village - Adhwara
Chintamani P.O. Susta, Mohammadpur, P.S. Anchal - Sakra, District -
Muzaffarpur.
2. Chandeshwar Chaudhary S/o Ramdaun Choudhary resident of village - Mahanth
Maniari, P.O., P.s. Maniari, District - Muzaffarpur.
3. Baikunth Choudhary S/o Ramdaun Choudhary resident of village - Mahanth
Maniari, P.O., + P.s. Maniari, District - Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Amarnath Jha, Advocate
Mr. Ajay Kr. Singh, Advocate
For the Respondents : Mr. Nachiketa Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 13-04-2018

The defendant of Title Suit No.12 of 2006 pending in the
Court of Additional Munsif-XIV, Muzaffarpur has filed this writ
application for quashing the order dated 01.03.2014 whereby and
whereunder the amendment petition filed by the plaintiff was allowed.

2. Heard learned counsel for the petitioner and the
respondents.

3. The respondent no.1 (plaintiff) filed the aforesaid suit
for declaration of his title and confirmation of possession over the suit
land mentioned in Schedule I of the plaint on the basis of sale deed
dated 24.12.2003 and the said sale deed dated 24.12.2003 is binding



on the defendants. The plaintiff further sought relief for recovery of possession, if dispossessed during the pendency of the suit. The defendant appeared and contested the case. After closing the evidence of both sides, when the argument was at the final stage, the plaintiff filed an amendment petition which after hearing was allowed. The plaintiff has added some facts in paragraph 8 of the plaint and in relief portion he has added one more relief for passing a decree for recovery of possession with respect to the suit land mentioned in Schedule I of the plaint. The plaintiff has added some new fact as regards his dispossession which took place on 22.10.2009.

4. The learned counsel for the petitioner submits that the suit was filed in the year 2006. The defendant filed written statement on 11.09.2006 and after framing issue both sides examined their witnesses. After closing evidence, the defendant closed his argument. By proposed amendment, the plaintiff has added facts relating to his dispossession on 22.10.2009. The defendant in his written statement filed in the year 2006 has asserted his possession over the disputed land. The defendant has stated that he acquired the land from the maternal grandson of Girija Kuer. The said Girija Kuer executed a sale deed in favour of her maternal grandson on 31.10.1966. The plaintiff by adding one paragraph has stated that the sale deed dated 31.10.1966 executed by Girija Kuer in favour of her maternal



grandson was without taking permission from the Consolidation Officer, Moraul because in the area concerned, the consolidation proceeding was going on and the village has been de-notified under Section 26(A) of the Consolidation Act as per notification published on 31.12.1979 and so the sale deed is void ab initio. The plaintiff has not disclosed as to when the consolidation proceeding commenced in the area concerned. On account of allowing amendment, the petitioner has been seriously prejudiced as in order to meet the said amendment he would be required to file additional written statement and also evidence to controvert the allegations made in the plaint which have been introduced by way of amendment.

5. The learned counsel for the respondents, on the other hand, submitted that after amendment he does not want to examine any witness and the suit would be decided on the basis of evidence which has already been produced before the court below by both the parties and so the court below has rightly allowed the amendment.

6. On going through the materials on record, I find that the defendant filed written statement on 11.09.2006 and it took seven years in concluding the evidence. The plaintiff asserts that he was dispossessed in the year 2009 but he remained silent for about four years and filed amendment petition in the year 2013 when the arguments of both sides have concluded. The court below while



allowing amendment has also observed that the amendment petition has been filed at a belated stage but it allowed the amendment subject to payment of cost. The amendment which has been allowed has changed the nature of the suit as the plaintiff has sought declaration with respect to the sale deed of the vendor of the defendant, which was executed in the year 1966. The court below has committed error in allowing amendment at the time of final argument which would require further evidence.

7. In view of above discussions, the impugned order allowing amendment is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.04.2018
Transmission Date	

