

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1516 of 2016

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1.Guneshwar Sah son of Late Guder Sah
2.Dinesh Sah son of Late Baku Sah
3.Umesh Sah
4.Satish Sah, both sons of Guneshwar Sah
5.Shaligram Sah
6.Pritam Sah @ Pritam Kumar
7.Nishikant Sah, all are sons of Dinesh Sah, all resident of village+P.S.-
Chausa, Dist.-Madhepura

.... Petitioners

Versus

1.Bishundeo Paswan
2.Ramswaroop Paswan, both sons of Late Mittal Paswan, both resident of
village+P.S. Chausa, Dist.-Madhepura

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 07-08-2018 Heard both sides.

The petitioners have filed this Civil Miscellaneous petition against the order dated 31.08.2016 passed in Title Suit No.319 of 2013 by learned Civil Judge Senior Division-IV, Madhepura by which the amendment petition of the petitioners in the relief portion for seeking recovery of possession has been dismissed.

The petitioners are the plaintiffs in the suit. The petitioners filed suit for correction in the record of rights and declaration of title as well as consequential reliefs. The suit was fixed for ex-parte hearing but the defendant appeared and on his



petition ex-parte order was recalled. The defendants were allowed to file written statement. Immediately thereafter the plaintiffs filed petition for amendment of plaint and relief portion by adding the relief for recovery of possession but the learned Civil Judge, Senior Division by the impugned order, rejected the amendment petition of the petitioners on the ground that no supporting documents or proof with regard to dispossession was filed.

Learned counsel for the petitioners submits that in the suit even the issues have not been framed and the hearing of the suit has not yet started. The plaintiffs sought amendment of the relief portion stating that on 15.07.2015 the defendants dispossessed the plaintiffs from the land. Learned Civil Judge, Senior Division has illegally rejected the amendment petition of the petitioners.

Learned counsel for the respondents however tried to support the order of learned Civil Judge, Senior Division and submitted that the plaintiffs never prayed for confirmation of possession and restraint from interfering into the possession of the plaintiffs. The plaintiffs did not file any document showing his dispossession from the lands.

Admittedly, the plaintiffs filed suit for correction in the record of rights and declaration of title with all consequential



reliefs. The defendants appeared and filed written statement but before framing of issues, the plaintiffs filed petition for amendment in relief portion that the recovery of possession be also given to the plaintiffs after declaration of title as the plaintiffs have already been dispossessed on 15.07.2015. The object of amendment is to allow such amendments which are necessary for resolution of dispute between the two sides. Order-6 Rule-17 of the C.P.C. clearly provides that “*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 questions in controversy between the parties*”. The court has got all power to allow the amendment in order to determine the real questions in controversy between the parties. The plaintiffs simply filed amendment seeking or adding relief for recovery of possession on the averment that he was dispossessed from the suit land on 15.07.2015. Thus, I find that the learned Civil Judge, Senior Division-IV, Madhepura has committed jurisdictional error by dismissing the amendment petition of the petitioners. Accordingly, the order dated 31.08.2016 passed in Title Suit No.319/2013 is set aside and the amendment petition is allowed.



This Civil Miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

Amit/-

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