

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.357 of 2016

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1. Bibi Rabia Khatoon W/o Late Amanullah Ansari
2. Ahmad Ali Ayubi
3. Mohammad Ali Ayubi
4. Hamid Ali Ayubi
5. Wajid Ali Ayubi @ Wajid Ali
6. Wahid Ali Ayubi @ Wahid Ali
7. Jamila Khatoon @ Jamila W/o Nazir Ahmad Haiyulkayam
8. Sufiya Khatoon @ Sufia W/o Muna Babu Haiyulkayam
9. Shakila Ayubi W/o Aadil Husain Haiyulkayam, 2 to 6 sons of Late Amanullah Ansari, 7 to 9 daughter of Late Amanullah Ansari All resident of Block No.-10, Flat No-57, L.F., Road No.10 E Rajendranagar, Patna-800016.

.... Appellant/s

Versus

1. Mumtaj Ahmad D/o Late Safi Ahmad
2. Sachche @ Rizwan Ahmad
3. Achchu @ Ahsan Ahmad
4. Raju @ Ahtesham Ahmad
5. Guddu @ Dilnadal Ahmad
6. Bhinni
7. Jugnu
8. Pammi
9. Jakku @ Shakila Khatoon 2,3,4 & 5 Son of Late Imtiaz Ahmad, 6,7,8 & 9 Daughter of Late Imtiaz Ahmad All resident of Mohalla- Kgazi, P.S.- Siwan Nagar, District- Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjeet Kumar
For the Respondent/s : Mr. Shailendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

6 12-10-2018

Heard both sides.

The petitioners have filed this Civil Misc. petition against the order dated 10.03.2016 passed by Sub Judge-X, Siwan in Title Suit No. 224 of 2008 by which he dismissed the petition of the petitioners for amendment of the plaint and addition of relief



for recovery of possession with regard to the land mentioned in separate schedule.

The learned counsel for the petitioners submits that the petitioners filed the suit for declaration of title and grant of injunction but during the pendency of the suit the petitioners have been dispossessed from the part of land mentioned in the schedule and, therefore, the petitioners filed petition for amendment to clarify certain facts, to add the land in separate schedule from which they have been dispossessed and to add the relief of recovery of possession. It is further submitted that the issues have not been settled but the learned Sub Judge has erroneously rejected the petition of amendment.

On the other hand, Mr. Shailendra Kumar Singh, the learned counsel for the respondents, submits that respondents/ defendants filed written statement stating the facts that petitioners/ plaintiffs were never in possession of that part of the land. The report of Pleader Commissioner also shows that petitioners were not found in possession of the land. Therefore, the petitioners by way of amendment wanted to change the nature of the suit.

On the submission of both sides the only question arises for consideration whether the amendment sought for by the plaintiffs has been rightly rejected on the ground that the same



may change the nature of the suit?

Order VI Rule 17 of the Code of Civil Procedure 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. Where, however, an application for amendment is made by the plaintiff in a suit in which the defendant has not appeared, though served with a summons, and where in the opinion of the court the amendment applied for is material one, the court shall give notice of the application to the defendant before allowing the amendment; and where in the absence of the defendant the court grants any amendment in a form materially different from that of which notice has been given to the defendant, a copy of the amended plaint shall be served on the defendant”.

From perusal of aforesaid provision, it is crystal clear that the court is vested with power to allow the amendment of the pleading of a party if such amendment is required to resolve the dispute between the parties.

Admittedly, the plaintiff filed the suit for declaration of title. The defendants filed written statement claiming that the plaintiffs were not in possession of part of the suit property. Thereafter, the plaintiffs filed the amendment petition. It is also admitted that the issues have not been settled and at this stage the plaintiffs are entitled to bring about any change, amend the plaint and mould their relief in order to seek relief in accordance with



their case even if the nature of suit may be changed. I find that mere adding of relief for recovery of possession would not change the nature of the suit and, thus, I find that the learned Sub Judge has committed jurisdictional error in dismissing the petition of the petitioners for amendment of the plaint. Accordingly, the order dated 10.03.2016 is set aside. The amendment petition of the plaintiffs is allowed.

It goes without saying that the defendants, if so desire, may file additional written statement.

(Prabhat Kumar Jha, J)

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