

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.234 of 2016

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1. Gurudwara Guru Nanak Singh Sabha, Darbhanga, through the Secretary, Gurudwara Guru Nanak Singh Sabha, Mohalla- Mirzapur, P.S.-Town, District-Munger.
 2. Sardar Gurmit Singh, Son of Sardar Guru Bachan Singh, Secretary Gurudwara Guru Nanak Singh Sabha, resident of Mohalla-Mirzapur, P.S.-Town, District-Munger.
 3. Sardar Muneshwar Singh, Son of Late Sardar Sujan Singh, President, Gurudwara Guru Nanak Singh Sabha, Darbhanga.
 4. Kuldeep Singh, Son of Late Sardar Atma Singh Vice President of Gurudwara Guru Nanak Singh Sabha, Darbhanga.
 5. Gurmeet Singh, Son of Sardar Tej Singh, Assistant Secretary, Gurudwara Guru Nanak Singh Sabha, Darbhanga.
 6. Sri Bed Prakash, Son of Late Tarachand, Member of Advisory Committee, Gurudwara Guru Nanak Singh Sabha, Darbhanga.
 7. Sardar Manjeet Singh, Son of Late Kuldio Singh, Member of Advisory Committee, Gurudwara Guru Nanak Singh Sabha, Darbhanga.

.... Appellant/s

Versus

1. Manish Ranjan, Son of Narayan Prasad Mehta, resident of Mohalla-Mirzapur, P.S.-Town, District-Munger.
2. Harbachan Singh, Son of Late Sardar Prem Singh, resident of Village-Mahudin, P.O.-Saharghat, District-Madhubani.
3. Sardar Tehal Singh, Son of Late Sardar Atma Singh, Member of Advisory Committee, Gurudwara Guru Nanak Singh Sabha, Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. J. S. Arora, Sr. Advocate
Mr. Manoj Kumar, Advocate
Mr. Gaurav Pratap, Advocate
Ms. Aishwarya, Advocate

For the Respondent/s : Mr. Manish Kumar No.13, Advocate
Mr. Rohit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 24-01-2018

1) Heard both sides.

2) The petitioner filed this petition for setting aside the order dated

02.03.2016 passed by Munsif Ist, Darbhanga in Title Suit No.33 of 2010



by which the learned Munsif allowed amendment petition of defendant Ist set to incorporate some facts in the written statement.

3) The brief facts giving rise to filing of this case is that the petitioners are the plaintiffs and the petitioners filed Title Suit No.33 of 2010 for eviction of defendant No.1 from the suit premises duly described in schedule of the plaint on the ground default of payment of rent. The defendant Ist set filed written statement admitting this fact that plaintiff gave possession of the suit premises to defendant No.1 and he is paying the rent. Defendant No.2 did not give possession the suit premises to defendant No.2 and he is not a sub-tenant rather he is a tenant of the plaintiff. Defendant No.1 contested the suit by filing written statement that he never defaulted in payment of rent. The plaintiff examined all the witnesses thereafter the defendant Ist filed petition under Order VI Rule 27 for amendment of written statement. The learned Munsif allowed the petition of the defendants for amendment of written statement on the ground that the same would not change the nature of the suit, although through amendments, the defendants wanted to withdraw admission made in para 15, 17, 18 and many other paragraphs of the written statement that they are tenants of the plaintiffs. Being aggrieved by the order aforesaid, the petitioner preferred this petition.

4) Mr. J. S. Arora, learned senior counsel appearing for the



petitioner submits that the defendants No.1 has very categorically stated in his written statement that he is not a tenant of defendant No.2 rather he got possession of the suit premises from plaintiffs and he is a bona fide tenant of the plaintiff. The defendant admitted his tenancy and retaliationship of landlord and tenant between the plaintiff and defendant No.1. After examination of all the witnesses on behalf of the plaintiff, the defendant filed petition for amendment. In para 5 of the amendment petition, defendant wanted to insert that 'he came to know that the suit land is ancestral land of the father of the defendant and gurudwara has not any right, title of the suit land' and that is why the plaintiff did not give the survey numbers of the suit land in the plaint. Although the plaintiff gave a full description of the land and its boundary and the learned Munsif without looking into the facts allowed the amendment petition by which the defendant No.1 is permitted to withdraw the admission with regard to the relationship of landlord and tenant.

5) On the other hand, the learned counsel for the respondent submits that the rule dealing with the amendment of written statement is that the Court should liberally allowed the written statement or removal the inconsistencies, deficiencies crept in the written statement. If the defendants want to add a new grounds of defence or substituting or altering a defence or takes inconsistent plea in the written statement that



should be allowed. The learned counsel for the respondent placed his reliance on judgment of this Court reported in **2016 (3) PLJR 709**.

6) Having heard both sides and from perusal of the plaint as well as written statement and the amendment petition, it is admitted facts that the plaintiff filed suit for eviction against the defendant No.1 on the ground of default of payment of rent. The plaintiff stated that he let out the suit premises to defendant No.2 but later on defendant No.2 inducted defendant No.1 as tenant in the suit premises. Defendant No.1 also paid rent to the plaintiff but later on he stopped payment of rent. Defendant No.1 in his written statement, Annexure '4', has in clear terms admitted that he is not a tenant of defendant No.2 rather the plaintiffs themselves handed over all suit premises to him and he is a *bona fide* tenant of the plaintiff. The defendant contested the suit on the ground that he is not a defaulter. The plaintiff examined all the witnesses and when the case was posted for evidence of the defendants, the defendants filed amendment of written statement. The defendant clearly stated in para 5 of the amendment petition that after para 24, para 25 be substituted or inserted in which it has been stated that the suit land is ancestral land of the father of the defendant and Gurudwara has got right and title over the suit land and as such duly described suit land and its premises is not given in the schedule of the plaint. The defendant by seeking amendment of the written statement wanted to withdraw his petition



about the relationship of landlord and tenant, and defendant claimed his own title over the suit premises. In my view a party cannot withdraw his petition by amendment of plaint or the written statement and amendment of a written statement has dealt with liberally and the defendant may put forth some more defence by seeking amendment in the written statement but defendant cannot be allowed to withdraw petition of his relationship with the plaintiff as tenant and landlord and, therefore, I find the learned Munsif has committed jurisdictional and materially irregularity in allowing the amendment petition of defendant No.1.

7) Accordingly, the order dated 02.03.2016 is set aside. The amendment petition is allowed. This Civil Misc. Petition is accordingly allowed.

(Prabhat Kumar Jha, J)

Sanjeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

