

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.758 of 2016

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1. Ram Chandra Sao
2. Lakhan Sao @ Ram Lakhan Sao Both sons of Late Mangal Sao residents of Mauza- Shivnar, Naya Tola, Gandhi Ashram, P.S.- Mokama, District- Patna.
.... Petitioners

Versus

1. Tarni Mahton, Son of Late Bhago Mahto
2. Rajendra Mahto son of Late Jagarnath Mahto
3. Aklu Mahto son of Late Jagarnath Mahto all residents of Mauza- Shivnar, Naya Tola, Gandhi Ashram, P.S.- Mokama, District- Patna.
.... Respondents

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Appearance :

For the Appellant/s : Mr. Sidhendra Narayan Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 04-04-2018

Heard both sides.

The petitioners have filed this Civil Miscellaneous petition against the order dated 09.02.2016 passed in T.S. No.1/1996 by Munsif, Barh, by which, the petition for amendment of the plaint by inserting plot no.7 in Schedule-1 of the plaint has been rejected.

The petitioners have filed T.S. No.1/1996 for right of easement. The case of the plaintiffs is that the plaintiffs constructed their house, leaving about 24 inches from west, as vacant land for easement and constructed house thereon. Similarly, defendants also constructed their house on plot no.7, leaving the same area of land from eastern side of his plot no.7. The lands in between the house of the petitioners and defendants remained vacant and the same was being used for ingress and egress of both sides but the defendants



started obstruction and for that the petitioners filed suit for right of easement. The petitioners also appended the sketch map in Schedule-2 of the plaint but due to inadvertence he could not mention the plot number in Schedule-1 of the plaint. During course of argument, the petitioners knew their fault and filed petition under Order 6 Rule 17 of the C.P.C. for amendment of the plaint and insertion of word plot no.7 in Schedule 1 of the plaint but learned court below without adverting to the relevancy of the amendment, rejected the amendment petition solely on the ground that the same is filed only to cause inordinate delay.

Learned counsel for the petitioners submits that the plaintiffs/petitioners have stated in their petition that the amendment is of formal nature. The insertion of plot number will not change the nature of the suit. The plaintiffs/petitioners did not want to examine any further witness. The amendment is relevant and essential for determination of the dispute between the parties.

On the other hand, learned counsel for the respondents submits that the amendment is filed after 19 years of filing of the suit.

After having heard the submissions of both sides and from perusal of the records including the plaint and the amendment petition, it appears that the petitioners sought relief for easementary right and stated that they constructed the house over plot no.5, leaving about 24 inches lands towards west of their plot. The defendants also



constructed their house on the plot no.7 and they also left some area towards east of their land for the use of ingress and egress of both sides. The petitioners also described in sketch map and showed disputed area in the sketch map on which they claimed right of easement. There is a statement in the plaint itself that the defendants also left some area towards east for easement but the plaintiffs failed to mention the plot of the defendants in Schedule 1 of the plaint. Therefore, I find that the amendment sought for is very much relevant for determination of the dispute between the parties and the same would not change the nature of the suit. The Munsif, Barh has committed jurisdictional error in rejecting the petition of amendment.

Accordingly, the order dated 09.02.2016 passed in T.S. No.1/1996 is set aside and the Civil Miscellaneous petition is allowed. Consequently, amendment petition is also allowed, subject to payment of cost of Rs.5000/- to be paid by the respondents.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2018
Transmission Date	NA

