

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19843 of 2013

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Sheo Parwati Charan S/o Late Bhagwati Charan, resident of Mohalla- Kashipur
Ward No. 12, P.S- Samastipur, District- Samastipur. Petitioner/s

Versus

1. Vijay Yadav S/o Mahendra Rai, resident of village - Gangapur, P.S-
Musrigharari, District- Samastipur, present address- Mohalla- Kashipur, Ward
No. 11, P.S- Samastipur, District- Samastipur.
 2. Md. Moinuddin S/o Md. Karuddin, resident of village- Dharampur Ward No. 2,
P.S- Samastipur, District- Samastipur
 3. Ajay Kumar Sharma S/o Brahmdeo Sharma, resident of village+ P.O- Dhahra,
Gopalpur, P.S- Pusha, District- Samastipur. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Sachchidanand Chaudhary, Adv. &
Mr. Lovekush Kumar, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-09-2018

Petitioner before this Court is plaintiff in Title Suit
No.27 of 2009 pending in the court of Civil Judge, Junior Division-II,
Samastipur. He has filed this writ application for quashing the order
dated 02.09.2013 whereby and whereunder his prayer to amend the
plaint was rejected.

2. Heard learned counsels for the petitioner as well as
the respondents and perused the record.

3. It appears that the petitioner filed the aforesaid suit
for grant of permanent injunction against the defendant (respondent)
commanding them not to change the physical feature of the suit
property as described in schedule 3 of the plaint and also to restrain
them from executing any document of transfer with respect to the said



land. In the plaint, the petitioner has pleaded his case of oral agreement. The petitioner sold the land in question to the respondent on 14.10.2000 with a condition that the purchaser-defendant will not sell the land in question to anybody and after recovery from illness and improvement in the economical condition, the plaintiff would get the land reconveyed in his favour. On the basis of said pleading, the plaintiff wants to add one more relief that the defendant be directed to return the registered sale deed after receiving consideration money according to the present value and on his failure, the sale deed be executed and requested through the process of Court.

4. I find that the court below has framed issues and one of the issue for adjudication is as to whether the plaintiff has right to claim preemption over the suit land. Thus, the amendment sought for by the petitioner is on the basis of pleading with which the defendants are aware. The Hon'ble Apex Court in a case of Pankaja Vs. Yellappa reported in AIR 2004 SC 4104 at paragraph 18 has observed as follows:

“We do not agree with the Courts below that the amendments sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.”



5. In the case at hand, I find that the plaintiff has sought relief on the basis of facts which are pleaded in the plaint. The said amendments are simple and these do not change the nature of suit. The case is at initial stage of trial as the parties have not adduced evidence.

6. In view of above discussions, the order dated 02.09.2013 refusing to amend the plaint is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22/09/2018
Transmission Date	N/A

