

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1455 of 2016**

Sunil Kumar Singh, son of Late Bakebehari Singh, resident of Village- Bara,
P.S.-Naubatpur, District- Patna, presently residing at Samadar Path, Park
Road, Kadamkuan, District- Patna.

... .. Appellant/s

Versus

Smt. Manju Singh, wife of Purushottam Singh, resident of Village+Post-
Balua, P.S.- Maner, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Neeraj Kumar
For the Respondent/s : Mr. Sanjay Kumar Verma

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 30-11-2018 Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 16.09.2016 passed by learned Sub Judge-VI, Patna in Title Suit No. 670 of 2013 by which the Sub Judge dismissed the petition of the petitioner for amendment in the plaint.

The learned counsel for the petitioner submits that petitioner filed the suit for setting aside the gift deed dated 26.06.2000 stating that the same is illegal, forged and fabricated and for confirmation of possession over the disputed land but after filing of the suit the petitioner gone through the gift deed and came to know about Title Suit No. 333 of 1983. The petitioner found that Title Suit No. 333 of 1983 was filed collusively and in this view of the fact the petitioner wanted to



insert and add some facts in the plaint by way of amendment. It is submitted that the suit is at pre trial stage and issues have not yet been framed, therefore, no prejudice would be caused to the defendant. The defendant always has liberty to file additional written statement but the learned Sub Judge illegally rejected the amendment petition holding that the amendment would entirely change the nature of the suit as new story has been stated in the amendment petition.

On the other hand the learned counsel for the respondent submits that by bringing amendment the plaintiff wanted to set aside the order passed in Title Suit No. 333 of 1983. The amendment would certainly change the nature of the suit. The plaintiff was in knowledge of the aforesaid fact and, therefore, the impugned order does not require any interference.

Having considered the submission of both sides and on perusal of the order, I find that admittedly the issues have not yet been framed. Order VI Rule 17 of the Code of Civil Procedure vests power in the court that the court may at any stage of the proceeding allow either party to alter or amend the pleadings in such manner and on such conditions as may be just and all such amendment shall be made as may be necessary for the purpose of determining the real questions in the controversy



between the parties.

On perusal of the amendment petition and the order impugned, it appears that plaintiff wanted to amend the plaint by inserting the fact that there was one Title Suit No. 333 of 1983 but he had no knowledge of the Title Suit No. 333 of 1983 and the same was collusive. The statements made in the amendment petition appears to be clarifactory in nature and such amendment should have been allowed in order to resolve the dispute between the parties. The issues have not yet been framed and, therefore, I find that by allowing the amendment no prejudice would be caused to the defendant. The defendant shall be at liberty to file additional written statement if at all he requires to do so. Thus, I find that the learned Sub Judge has committed jurisdictional error by rejecting the amendment petition. Accordingly, the order dated 16.09.2016 passed by learned Sub Judge-VI, Patna in Title Suit No. 670 of 2013 is set aside. The amendment petition is allowed. This Civil Misc. petition is, thus, allowed.

(Prabhat Kumar Jha, J)

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