

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.47 of 2017

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1. Md. Kalimuddin, S/o Late Maninuddin, resident of Village- Chandbhati,
P.S.- Dagarua, Distt- Purnea.

.... Petitioner/s

Versus

1. Md. Tamizuddin,
2. Md. Samid,
3. Md. Farid, All 1 to 3 are S/o Late Sk Saghir, resident of Village- Mathor,
P.S.- Dagarua, Distt- Purnea at present Chanbhati, P.S.- Dagarua, Distt-
Purnea.
4. Bibi Rahima Khatoon, D/o SK Tamizuddin, W/o Mansoor Alam, resident
of Village- Maheshkhut, P.S.- Dagarua, Distt- Purnea.
5. Anwar Ali, S/o Shaukat Ali, Son in law of Sk Tamizuddin, resident of
Village- Chandbhati, P.S.- Dagarua, Distt- Purnea

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Mallick

For the Respondent/s : Mr. Gyan Prakash Ojha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

6 04-10-2018 Heard both sides.

The petitioner filed this petition against the order dated 19.10.2016 passed in Title Suit No.404 of 2012 by Sub Judge, Baisi, Purnea by which the learned Sub Judge dismissed the petition of the petitioner filed under Order VI Rule 17 C.P.C.

The petitioner is the plaintiff in the suit. The petitioner filed the petition for amendment of the plaint and adding the purchasers of land from Bibi Rahitun and Anwar Ali, the defendants during the pendency of the suit. The plaintiff came to know about the facts that suit land are sold by defendants, Bibi



Rahitun and Anwar Ali to different persons during the pendency of the suit and they are necessary parties but the learned Sub Judge dismissed the petition holding that the purchasers from defendants are not necessary parties. The petitioner being aggrieved by the aforesaid order filed this petition and submitted that the petitioner filed the suit for declaration of title and confirmation of possession by virtue of oral gift dated 15.04.1987 and for declaration of deed of gift no.11726 dated 17.11.1989 executed by Hazi Sk Ashab Ali in favour of the defendants, Bibi Rahitun as illegal, fraudulent and void. The plaintiff knew that Bibi Rahitun sold the land in favour of different persons and the purchasers are putting hindrance in peaceful possession over the land of the plaintiff. The result of suit may affect the right of the purchasers, therefore, the plaintiff filed the petition for amendment.

Learned counsel for the respondents submits that hearing of the suit has already begun and the proviso of Order VI Rule 17 C.P.C. prohibits amendment of the plaint after hearing of the suit starts unless the plaintiff proves the due diligence on his part not to bring the facts on record earlier or before beginning of hearing of the suit, therefore, the order does not require any interference.

Having considered the submissions of both sides and on perusal of records, I find that it was the plaintiff who filed the



petition for amendment in the suit. The issues have been settled but the case is still pending for the evidence of the plaintiff. The plaintiff has not examined any witness. Thereafter, the plaintiff knew that the defendants sold the suit land to different persons who are putting hindrance in his peaceful possession and thus the plaintiff filed the petition for amendment. The plaintiff has got prerogative to sue any person against whom he seeks relief or he thinks that the result of the suit may adversely affect the right of a person. In this view of the fact, I find that the learned Sub Judge has committed jurisdictional error in rejecting the petition for amendment of plaint.

Accordingly, the order dated 19.10.2016 is set aside. Amendment petition filed by the plaintiff is allowed. This civil miscellaneous petition is accordingly allowed.

(Prabhat Kumar Jha, J)

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