

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1663 of 2017

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1. Mahakant Jha, Son of Late Markandey Jha,
 2. Ganesh Jha, Son of Late Markandey Jha,
 3. Ashutosh Jha, Son of Mahakant Jha,
 4. Abinash Jha, Son of Mahakant Jha,
 5. Abnish Jha, son of Ganesh Jha, All resident of Village- Suro P.S. Bachhwara, District- Begusarai.

.... Petitioners

Versus

1. Sri Raj Gopal Dutta Jha, Son of Late Nand Kishore Jha,
2. Sri Hemant Kumar Jha, Son of Sri Gopal Dutta Jha.
3. Sri Sushil Kumar Jha, Son of Sri Gopal Dutta Jha.
4. Awaneet Kumar Jha, Son of Sri Gopal Dutta Jha.
5. Prabhat Kumar Jha, Son of Sri Gopal Dutta Jha.
6. Sashi Kant Jha, Son of Sri Raj Gopal Jha.
7. Priyadarshi Jha, Son of Sri Raj Gopal Jha. All resident of Village Suro, P.S. Bachhwara, District- Begusarai.
8. Surendra Jha,
9. Devendra Jha,
10. Jitendra Jha, all sons of Late Sri Ram Dutta Jha,
11. Sri Jai Gopal Jha, Son of Late Nand Kishore Jha.
12. Birendra Jha, Son of Late Chandra Shekhar Jha.
13. Babloo Jha, Son of Birendra Jha, All resident of Village Suro, P.S. Bachhwara, District- Begusarai.
14. Narmadeshwar Jha, Son of Bisheshwar Jha, of Village & P.O. Majhaul, Distt.- Begusarai.
15. Akhilesh Jha, Son of Shyam Sundar Jha, resident of village and P.O. Manika Pargagna Saraisa, District Samastipur.
16. Smt. Deomuni Devi Wife of Kashi Nath Mishra, resident of Village and P.O. Morwa Anantpur, P.S. Tajpur, District- Samastipur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Gajendra Kumar Jha
Mr. Abhay Kumar Jha
Mr. Bam Bahadur Jha
For the Respondent/s : Mr. Rajni Kant Jha

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

4 12-07-2018

Heard both sides.

The petitioners are defendants first set in Title Suit



No.66/1987. The petitioners filed this Civil Miscellaneous petition against the order dated 25.05.2017 by which the petition of the petitioners filed under Order 6 Rule 17 of the C.P.C. for amendment in Para-15 and 16 of the written statement has been dismissed.

Learned counsel for the petitioners submits that the amendment is clarifactory in nature and it would not change the nature of the suit. The plaintiffs filed suit for declaration of title and recovery of possession by removing encroachment from plot no.601 in the year 1987. The defendants first set filed written statement on 24.08.1990. The petitioners filed petition for amendment in Para-16 and 17 of the written statement. The petitioners wanted to insert that guardians of defendants exchanged some portion of the lands of plot no.601 and constructed the house but the learned court below illegally and erroneously rejected the petition of the petitioners. It is submitted that the principle for amendment is that if any amendment which is necessary for resolution of the dispute between the parties is necessary, the Court should allow such amendment.

On the contrary, learned counsel appearing on behalf of the plaintiffs submits that on one pretext or other the defendants want to linger the case. It is submitted that the defendants in their



written statement filed on 24.08.1990 have very specifically stated in para-15 and 16 of the written statement that their house is situated on plot no.438, which is situated west to the plot no.601 owned by the plaintiffs. No portion of plot no.601 was encroached and if any portion of plot no.601 is encroached, the defendants have perfected their title by way of adverse possession but now defendants wanted to insert new story by stating that guardian of defendants got some portion of plot no.601 in exchange from some lands of plot no.438. The defendants want to withdraw their admission made in the plaint and the same admission cannot be allowed to withdraw and the court below has rightly dismissed the amendment petition.

Having considered the submissions of both sides, I find that the defendants first set filed amendment petition and introduced a new story although the defendants first set admitted this fact that no portion of plot no.601 was encroached by them and if any portion of plot no.601 was encroached they perfected their title by way of adverse possession but the defendants did not disclose the story of exchange of some portion of land of plot no.601 from some portion of the land of plot no.438. Therefore, I find that the defendants wanted to withdraw admission by introducing a new story and learned Munsif, Teghara, Begusarai



has rightly rejected the amendment petition of the petitioners.

Accordingly, I do not find any merit in this Civil Miscellaneous petition. The same is dismissed.

Learned Munsif, Teghra, Begusarai is directed to dispose of the suit itself within six months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

Amit/-

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