

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1464 of 2018**

1. Suman Kumar @ Suman Rai
2. Sunil Kumar @ Sunil Rai @ Bhanu Rai
Both sons of Late Ram Brij Rai @ Ram Vriksha Rai, Residents of Village
Zilkabad Tahal Tola, P.O. Garkha, P.S. Garkha, District Saran.

... .. Defendants/Petitioners

Versus

1. Chhathi Lal Rai, Son of Late Saryug Rai, Resident of Village Zilkabad
Tahal Tola, P.O. Garkha, P.S. Garkha, District Saran.

... ..Plaintiff/Respondent 1st Set

2. Munshi Lal Rai, Son of Late Ram Preet Rai, Resident of Village Zilkabad,
Tahal Tola, P.O. Garkha, P.S. Garkha, District Saran.

3. Munilal Rai, Son of Late Kripal Rai

4. Nand Lal Rai, Son of Late Musafir Rai.

Residents of Village Zilkabad, Tahal Tola, P.O. Garkha, P.S. Garkha, District
Saran.

... .. Defendants/Respondents 2nd Set

Appearance :

For the Appellant/s : Mr. Nagendra Rai

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT**

Date : 04-10-2018

Heard Mr. Nagendra Rai, the learned counsel appearing on
behalf of the petitioners.

2. The petitioners have filed this civil miscellaneous
petition against the order dated 18.07.2018, passed by the learned
Sub-Judge-V, Chapra in Title Suit No.465 of 2006 by which the
learned Sub-Judge allowed the petition of amendment of the plaintiff
for inserting new relief with regard to recovery of possession.

3. Petitioners are defendants in the suit. The learned
counsel for the petitioners submits that the suit is at the argument
stage. The plaintiff filed the petition for two amendments, one with



regard to change of areas of the suit property and another with regard to adding new relief that “if the court finds in any way the plaintiff out of possession, the delivery of possession may be ordered and within certain days the defendant be directed to hand over the possession”. It is submitted that according to Section 34 of Specific Reliefs Act, the plaintiff is required to make prayer for alternative or consequential relief. If the plaintiff did not seek consequential relief, the suit can be dismissed on this ground alone. It is further submitted that in view of the of the provisions as contained in proviso of the Order VI, Rule 17, the elements of due diligence is lacking and unless the plaintiff is able to show the due diligence, the proviso bars any amendment made in the plaint or WS after start of the hearing of the suit but the learned Sub-Judge did not take into consideration the aforesaid facts and allowed the amendment petition. The learned counsel for the petitioners further placed his reliance in support of his submission on the judgment of the Apex Court rendered in the case of J. Samuel & Ors. vs. Gattu Mahesh & Ors., reported in 2012 (1) PLJR 412 (SC).

4. After hearing the submissions of the learned counsel for the petitioners and on perusal of the records, I find that the plaintiff has sought declaration of title and confirmation of possession over the suit land but after conclusion of evidence the plaintiff find that the consequential relief should have also been inserted in the plaint



and the plaint also requires correction in the area of the suit land. Thereafter the plaintiff filed the petition for amendment and the same was allowed. The amendment sought for in, in my view, does not change the nature of the suit and it is simply a consequential. As such consequential relief can be added at any time before the delivery of the judgment in order to pass effective order/judgment and resolving the dispute between the parties. On perusal of the judgment on which the learned counsel for the petitioners placed reliance, it appears that in the aforesaid case the plaintiff did not state in the plaint about his willingness to perform the part contract in a suit for Specific Performance of Contract and on such the Hon'ble Supreme Court has held that at a belated stage such amendment should not be allowed. The facts of the case are quite different. Accordingly, I do not find any merit in the civil miscellaneous petition and the same is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.10.2018
Transmission Date	NA

