

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.81 of 2019

Bishwanath Ram @ Vishwanath Ram, Son of Late Lalchan Ram, resident of
Village Jaitiya Tola Harpur, P.S. Chanpatia District- West Champaran

... .. Appellant/s

Versus

1. Sitaram Mishra, son of Late Laxmi Mishra, resident of village- Jaitiya Tola
harpur P.S. Chanpatia, District- West Champaran
2. Most Gulabo Kunwar, Wife of Late Lalchand Ram.
3. Shivnath Ram, Son of Late Lalchand Ram.
4. Minta Devi wife of Shidari Ram, D/O Late Lalchand Ram
all resident of village Jaitiya Tola Harpur, P.S. Chanpatia District West
Champaran. Respondent/s

Appearance :

For the Appellant/s : Mr.Lalan Kumar Verma
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 15-01-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 has been
filed by the petitioner for quashing the order dated 19.07.2018
passed by the learned District Judge, West Champaran, Bettiah,
in Title Appeal No. 33 of 2014, as contained in Annexure-5 to
this petition, by which the prayer for amendment in the plaint
filed by the plaintiff-respondent has been allowed with regard
to dispossession on 25.06.2016 from the suit land.

3. Learned counsel appearing for the petitioner
submitted that the impugned order passed by the court of
appeal is without jurisdiction. He submitted that by allowing
the application of the plaintiff-respondent, the court below has



allowed the plaintiff to change the nature of the suit. The amendment sought for by the plaintiff-respondent was not necessary in order to determine the real controversy between the parties. Since the real question between the parties had already taken finality in the suit, the amendment at the appellate stage is bad in law. The court below failed to appreciate and consider that in view of the findings recorded by the trial court in the Title Appeal No.118 of 2005, the plaintiff was dispossessed from the suit land in the year 2005 and by way of the proposed amendment, it is alleged that he has been dispossessed on 25.06.2016 by the defendants.

4. On perusal of the record, I find that the plaintiff-respondent had filed Title Suit No. 118 of 2005 against one Lalchand Ram and others for the following reliefs:-

(a) Declaration of right and title over the suit land described in scheduled 1 and 2 of the plaint.

(b) Confirmation of possession in respect of schedule-1 of the plaint.

(c) Eviction of the defendant from the suit land detailed in schedule-2 of the plaint.

(d) Permanent injunction in respect of schedule-1 of the plaint.



5. The defendants filed written statement denying the allegation made by the plaintiff. They alleged that Plot No. 1166 measuring 1 Bigha 6 Katha 8 Dhur is not recorded in the name of Mukut Nath in R.S. Kahtiyar rather recorded as Gairmajarua Malik land in the name of Maharani Janki Kuer. Mukut Nath Mishra was not the Khewatdar and owner of plot no. 1166 nor same was settled to the plaintiff through Patta and jamabandi No. 15 was not created. The paper of Patta is illegal and void and created only to acquire the Gairmajarua Malik land. The defendants further took the plea that they are in possession over the suit land. They denied possession of the plaintiff and they claimed their title over the suit land by virtue of adverse possession in respect of the suit land.

6. On 03.06.2014, learned Munisif, Bettiah, West Champaran, after considering oral and documentary evidence, decided the suit in favour of the plaintiffs-respondents. He held that the plaintiff though got right and title over the suit land, the possession of the schedule-1 was also declared in favour of the plaintiff. It was also declared that the defendants are in illegal possession over the land detailed in Schedule- 2 of the plaint since they year 2005. Thus, the defendants were directed to give vacant possession of schedule-2 land to the



plaintiff.

7. The defendants being aggrieved by the judgment passed in Title Suit, filed appeal vide Appeal No. 33 of 2014 before the Court of District Judge, West Champaran. During pendency of the Title Appeal, the plaintiff-respondent filed a petition on 26.02.2018 under Order-VI Rule-17 of the Code of Civil Procedure for amendment of the plaint. He pleaded that during pendency of the appeal, the defendants forcibly dispossessed him from the suit land detailed in Schedule- 1 of the plaint on 25. 06.2016.

8. The petitioner filed rejoinder to the petition filed by the plaintiff-respondent under Order-VI Rule-17 of the Code of Civil Procedure.

9. On 19.07.2018 after hearing the parties, the appellate court allowed the amendment petition filed on behalf of the plaintiff-respondent for amendment in the plaint with regard to dispossession from the suit land on 25.06.2016 detailed in Schedule-1 of the plaint.

10. In my considered opinion, the court below has committed no material illegality or irregularity in allowing the petition filed by the plaintiff-respondent. It is not correct to say that the learned Munsif while passing the judgment had



observed that the plaintiffs were wrongly dispossessed by the defendants from the suit land in the year 2005.

11. As a matter of fact, while allowing the suit, the learned Munsif has categorically stated that the plaintiff is in possession of the land detailed in Schedule-1. In other words, the possession of the plaintiff over the land detailed in Schedule-1 was declared by the learned Munsif vide his order dated 03.06.2014, which was challenged in appeal. Since his contention is that after the suit was decided, the petitioner dispossessed him from the land detailed in Schedule-1 on 25.06.2016, no error can be found with the order impugned as the action alleged against the petitioner is a subsequent event, which took place after the judgment in the Suit. In absence of any perversity in the order or any lack of jurisdiction, no interference is warranted by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

12. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
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