

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.84 of 2019

1. Lalit Narayan Singh
2. Mahesh Prasad Singh
3. Dulal Singh
4. Manoj Singh @ Manoj Kumar Singh
5. Aman Kumar Singh,
all son of late Satish Lal Singh, resident of village- Chandpur, P.S.- Kadwa,
District- Katihar.

... .. Appellant/s

Versus

1. Kritya Nand Sah, S/o Late Kulanand Sah
2. Rajendra Sah, S/o Krityanand Sah
Both resident of village Chandpur, P.S. Kadwa, District- Katihar
3. Md. Shamsar Alam, s/o Late Md. Yahya, resident of village Mahboob
Khan Tola, P.S.- K. Hat, District- Purnea
4. Md. Maksud Alam Mansori, s/o late Md. Usman, resident of Maulbi Bari,
P.S.- K. Hat, District- Purnea
5. Md. Sakil Ansari, s/o late Abdul Gaffar, resident of Rajabari, P.S.- K. Hat,
District- Purnea
6. Pramod Kumar Sinha, s/o late Santosh Kumar Sinha, resident of village
Chandpur, P.S. Kadwa, District- Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jai Prakash Tiwari, Adv.
Mr. Kumar Satyanand, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 15-01-2019

Heard learned counsel for the petitioners.

2. The present application under Article 227 of the Constitution of India has been filed by the petitioners for quashing the order dated 09.08.2018 passed by the learned Sub-Judge, Barsoi at Katihar in Title Suit No. 89 of 2011 whereby the application filed on behalf of the petitioners under Order 6 Rule 17



of the Code of Civil Procedure (for short 'CPC') seeking amendment in para 9 of the plaint as well as relief no.(ii) has been rejected.

3. Learned counsel appearing for the petitioners submitted that Order 6 Rule 17 of the CPC postulates amendment in pleading at any stage. He submitted that for the purpose of determining the real question in controversy between the parties, the court below ought to have allowed the application filed by the petitioner, but erroneously it has rejected it, which would cause great injustice to the petitioners.

4. Having heard learned counsel for the petitioners and carefully perused the application, I find that the petitioners filed Title Suit No. 89 of 2011 in the court of Sub-Judge, Katihar for declaration that they have perfected their title over the suit land, details of which have been given in Schedule-A, by adverse possession, which was to the conscious knowledge and without any obstruction of defendants since several years.

5. After the trial commenced and reached to an advanced stage, a petition under Order 6 Rule 17 CPC was filed in the court of sub-judge seeking amendment whereby the petitioners wanted to delete the statements made in para 9 as well as in relief no.(ii) whereby they claim their title over the suit land on the



ground of possession since long without any obstruction from the defendants. They wanted deletion of the claim of title by adverse possession and its substitution by inserting that “*the court be pleased to direct the defendants to execute and register sale deed with respect to suit land within a time stipulated by the court and on failing which to do so by the defendant then the court be pleased to execute and register sale deed with respect to suit land in favour of the plaintiff and possession of the plaintiffs be confirmed as the plaintiffs were and are still ready and willing to perform their part of a contract*”.

6. The court below dismissed the said prayer of the petitioners on the ground that the trial of the case had commenced and had reached to an advanced stage and by way of amendment the petitioners want to change the nature of the suit, which was brought for declaration of title on the ground of adverse possession to a suit for specific performance of contract.

7. I see no jurisdictional error in the order passed by the court below. The reasons assigned by the court below for dismissing the prayer of the petitioner is neither illegal nor perverse.

8. In that view of the matter, I am not inclined to accede to the prayer of the petitioner.



9. The application is dismissed.

(Ashwani Kumar Singh, J)

pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.01.2019
Transmission Date	

