

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.577 of 2019**

Surendra Yadav, male, aged about 49 years, Son of Late Laxman Yadav, resident of village Patauna, P.O. Parohi, Police Station-Bisfi, District-Madhubani.

... .. (Plaintiff) / Petitioner

Versus

1. Shyam Yadav, Son of Late Rameshwar yadav, resident of village Patauna, P.O.- Parohi, P.S.- Bisfi, District- Madhubani.  
....(Defendant Ist Party.....Respondent 1<sup>st</sup> Party
2. Deo Narayan Yadav, Son of Late Subodh Yadav, residents of Village Patauna, P.O.- Parohi, P.S.- Bisfi, District- Madhubani.
3. Ranjit Yadav, son of Late Ram Pratap Yadav. residents of Village Patauna, P.O.- Parohi, P.S.- Bisfi, District- Madhubani.
4. Ashok Yadav, son of Jang Bahadur Yadav, residents of Village Patauna, P.O.- Parohi, P.S.- Bisfi, District- Madhubani.
5. Santosh Yadav, son of Jung Bahadur Yadav, residents of Village Patauna, P.O.- Parohi, P.S.- Bisfi, District- Madhubani.

... .. Respondents 2<sup>nd</sup> Party

**Appearance :**

For the Appellant/s : Mr. Ramesh Kumar Choudhary-Advocate  
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**

**27-09-2019**

Heard learned counsel for the petitioner.

2. This application has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the order dated 16.01.2019 passed by the learned Subordinate Judge, Benipatti, Madhubani in Title Suit No.561 of 2014 whereby he has rejected the amendment petition filed by the plaintiff/ petitioner under Order-VI, Rule-17 of the Code of Civil Procedure (for short 'C.P.C.').

3. Learned counsel appearing for the petitioner



submitted that the amendment sought for was formal in nature.

4. Allowing the same would neither change the nature of the suit nor any prejudice would cause to the case of the other side. According to him, if the amendment sought for is not allowed, the same would occasion in failure of justice and cause irreparable loss and injury to the plaintiff-petitioner.

5. Having heard the petitioner and perused the application, it would be evident that the petitioner filed Title Suit No.561 of 2014 for declaration of his right, title and interest besides other reliefs.

6. The defendant first party-respondent first party filed written statement and denied the assertion set forth in the plaint. He denied the execution and registration of sale deed in favour of plaintiff by Sujan Devi. He also alleged that during life time of Dasai Yadav, Sujan Devi had no right, title, interest in respect of Schedule-1 property. Dasai Yadav being impressed with service of the defendant, executed Ataynama in favour of the defendant.

7. The plaintiff pleaded that during pendency of the suit, the defendants, in collusion with each other on 27.05.2018 dispossessed the plaintiff from the suit land and constructed GHERABANDI from TATTI.



8. Considering the subsequent development, he filed an application on 04.06.2018 under Order-VI, Rule-17 of the C.P.C. praying therein for amendment in the relief portion regarding recovery of possession besides other amendments.

9. A rejoinder was filed on behalf of defendants, in which it was alleged that the description of land, i.e., Khesra, area, boundary of dispossessed portion of land etc. have not been stated in the amendment petition, hence amendment petition being devoid of any merit be rejected.

10. After hearing the parties, the Court below rejected the prayer made by the petitioner for the proposed amendment vide impugned order dated 16.01.2019 on the following grounds:-

A) That in the written statement itself in Para-14, 16, 20, 26 and 27, it is clearly stated that the defendants are in possession over the suit land.

B) That the report of the Pleader Commissioner clearly shows that the suit land is not surrounded by TATTI.

C) That in the petition filed for proposed amendment, nothing has been stated clearly regarding description of the land from whom the petitioner claims to have been dispossessed.



11. The grounds taken by the trial Court for rejecting the application filed by the petitioner are cogent and sound.

12. Order-VI, Rule-17 of the C.P.C. gives discretionary jurisdiction to the Court to allow either party to amend his pleadings on just grounds. However, it explains that the prayer in this regard can be allowed by the Court at any stage.

13. However, the provision mandates that only those amendments shall be made as may be necessary for determining the real questions of controversy between the parties.

14. The powers granted under Order-VI, Rule-17 of the C.P.C. are discretionary in nature. If the Court was not satisfied with the bonafide of the prayer of the petitioner, no error can be found with the order impugned.

15. Moreover, the amendment application was filed after commencement of the trial.

16. The proviso to Order-VI, Rule-17 of the C.P.C. creates an exception to the general rule. It clarifies that no application for amendment shall be allowed after the commencement of the trial, unless the Court comes to the



conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

17. Here, in the present case, though a plea has been taken by the petitioner that he was dispossessed from the suit land during pendency of the application, no detail of the land from which he was dispossessed, has been given. The petition is absolutely vague.

18. Under the circumstances discussed above, if the trial Court has dismissed the application filed by the plaintiff-petitioner, no illegality can be found in the order impugned. I see no merit in the application.

19. It is dismissed accordingly.

**(Ashwani Kumar Singh, J)**

vikash/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | N.A.       |
| Uploading Date    | 30.09.2019 |
| Transmission Date | 30.09.2019 |

