

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.790 of 2016

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Pramod Kumar son of Rajendra Rai and adopted son of late Ramjee Chatiya
Resident of village-Lawapur Narayan, P.S. Mahnar, District- Vaishali.

... .. Appellant/s

Versus

1. Rajgir Singh Son of late Raj Ballabh Singh
2. Lallan Singh
3. Bir Bahadur Singh Both sons of late Bhulan Singh
4. Basmati Devi Wife of Manulal rai and daughter of latge Bhulan Singh All
resident of village- Lawapur narayan, P.O. Lawanpur, P.S. Mahuar, District-
Vaishali
5. Surendra Rai
6. Kamal Rai Both sons of late Bhuneshwar Rai
7. Mostt. Meena Devi @ Muni Devi window of late Bhuneshwar Rai
8. Deepak Kumar son of late Saskal Raj
9. Sm.t Nutan Devi wife Ramechandar Chaudhary Resident of Village-Majhauri,
P.S. Bidupur, District-Vaishali.
10. Raj Mahali Devi Widow of late Baleshwar Chaudhary
11. Manoj Kumar
12. Sanjay Kumar Both sons of late Baleshwar Chaudhary
13. Mukesh Kumar
14. Vijay Kumar
15. Abhishek Kumar
16. Amitesh Kumar All sons of late Jitendra Kumar
17. Mostt. Anjali Devi Wife of late Jitendra Kumar All resident of village-
Lawapour narayan, P.O. Lawapur, P.S. Mahnar, District-Vaishali

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Narayan Parbat, Sr. Advocate.
For the Opposite Parties	:	Mr. Subodh Kumar Jha, Adv. Mr. Pranav Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-01-2019

Though notices have been validly served upon all the
opposite parties, except opposite party no. 1, 5, 6 and 8, others
have chosen not to appear either in person or through advocate.
Heard Mr. Mahesh Narayan Parbat, learned senior advocate



appearing for the petitioner and Mr. Pranav Kumar Jha, learned advocate for the opposite parties nos. 1, 5, 6 & 8.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 30.03.2016 passed by the learned Sub-Judge-IX, Vaishali at Hajipur in Title Suit No. 149 of 2011 by which the prayer of the petitioner for amendment of plaint has been rejected.

3. Mr. Mahesh Narayan Parbat, learned senior advocate for the petitioner submitted that the learned Sub-Judge was not justified in rejecting the amendment petition filed by the petitioner especially when the trial had not commenced. He contended that the petitioner had filed title suit for declaration of title, recovery of possession and mesne profit. However, after filing the suit, the opposite parties sold some of the disputed lands to the third parties and, therefore, the plaintiff filed an application on 15th July 2013 under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') for amendment of the plaint as well as to add the vendee as defendants in the suit as the suit is for recovery of possession and mesne profit also, but the court below erroneously rejected the prayer on the ground that in case the petitioner would succeed in the suit, his interest will be fully protected as transfer during pendency of the suit would be hit by the doctrine of lis pendens.



4. Per contra, Mr. Pranav Kumar Jha learned counsel appearing for the contesting opposite parties submitted that there is no error in the order impugned passed by the court below. He submitted that the court below has rightly rejected the application for amendment. He contended that in view of the provisions prescribed under Section 52 of the Transfer of Property Act, if the defendants transfer or deal with the property in any way affecting the right of the plaintiff except with the order or authority of the court, the alienation of property would be hit by the doctrine of lis pendens. Hence, the interest of the petitioner is fully protected and, therefore, the court below rightly rejected his application for amendment of the plaint.

5. I have heard learned counsel for the parties and carefully perused the record.

6. The plaintiff-petitioner had filed an application on 15th July 2013 under Order 6 Rule 17 of the CPC for amendment in the plaint as well as to add the vendees as defendants in the suit as the suit is for recovery of possession and mesne profit. However, the learned Sub-Judge rejected the said prayer mainly on the ground that the interest of the plaintiff-petitioner is protected by operation of Section 52 of the Transfer of the Property Act. Under the CPC, any party is permitted to amend its pleading in order to bring out



the true and correct facts necessary for determining the real question in controversy. Usually, a liberal approach is to be taken in such matters so as to ensure that no material fact is left out without determining the matter in issue.

7. Order 6 Rule 17 of the CPC, which enables the parties to make amendments in the plaint reads as under:-

“17 Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, 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.”

8. There is no dispute to the fact that while the court below was considering the application for amendment, the trial had not commenced. There is also no dispute to the fact that after the plaintiff-petitioner had filed the suit, by way of five registered sale deeds, some parts of the property in dispute was transferred to five different persons. Since the case is not only for declaration of title and recovery of possession but it is also for compensation for the profit received from the property in dispute by the person in wrongful possession, the court below ought to have allowed the



prayer of the petitioner to amend the plaint and add the vendees as defendants in the suit, as the accruals from the property illegitimately held can be recovered from the parties using the land.

9. In that view of the matter, the impugned order dated 30.03.2016 passed by the learned Sub-Judge-IX, Vaishali at Hajipur cannot be sustained. It is set aside, accordingly.

10. The application stands allowed.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.01.2019
Transmission Date	

