

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.91 of 2020**

=====

Ram Gopal Agrawal Son of late Gokul Chand Agrawal, Resident of Baniya Tola, P.O. and P.S. and District- Katihar.

... ..Defendant/Petitioner

Versus

Ram Chandra Sah Son of late Ram Bilash Sah, Resident of Girls School Road, P.O. and P.S. and District- Katihar.

... ..Plaintiffs/Respondents

=====

Appearance :

For the Petitioner/s : Mr.Najeeb Ahmad
For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

18-01-2020

The present petition has been filed “*for quashing the order dated 27.11.2019 passed by the learned Munsif, Katihar in Eviction Suit No. 2/2016, whereby and whereunder petition dated 21.05.2019 filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure for amendment in his plaint, has been allowed, as well as for staying the further proceeding of abovementioned Eviction Suit No. 02/2016 of the court of learned Munsif, Katihar till final disposal of instant application.*”

2. Learned counsel for the defendant/petitioner submits that the learned court below has erred in passing the impugned order allowing amendment of petition filed by the plaintiff/respondent belatedly and after commencement of trial, contrary to the express provisions contained in proviso to Order



VI Rule 17 CPC. It is further submitted that such amendment ought not to have been allowed as the same was sought to be made in the light of the amendment sought in the written statement of the defendant/petitioner.

3.Having heard learned counsel for the defendant/petitioner and on consideration of materials on record, this Court is not inclined to interfere in the matter. Both limbs of the submission on behalf of the defendant/petitioner are not sustainable in view of authoritative decision of the Hon'ble Supreme Court rendered in *Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others*, (2006) 4 SCC 385 observing as follows--

“15. The object of the rule is that courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the



appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.”

4. In the above circumstances, this Court does not find any illegality or infirmity or error of jurisdiction in the impugned order. The petition accordingly stands dismissed.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23 .01.2020
Transmission Date	

