

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.422 of 2018**

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Durga Prasad son of Late Sudama Prasad, Resident of Mohalla- Ambedkar
Nagar Siwan, P.O.- Siwan, P.S.- Siwan Town, District- Siwan.

... .. Petitioner/s

Versus

Gharbharan Prasad son of Late Rameshwar Prasad, resident of Mohalla-
Purani Bajaji Kasera Toli, Siwan, P.O.- Siwan, P.S.- Siwan Town, District-
Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Dubey

For the Respondent/s : Mr. Akhileshwar Kumar Sinha

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER**

9 05-12-2022 Heard Mr. Ranjan Kumar Dubey, learned counsel for
the petitioner and Mr. Akhileshwar Kumar Sinha, learned
counsel for the respondent – plaintiff.

The petitioner is the defendant in Eviction Suit No. 5 /
2012. The suit has been filed for eviction by the respondent-
plaintiff bearing Eviction Suit No. 5 of 2012 *inter alia* on the
fact that the suit land was purchased by the plaintiff, belonging
to the wife of the petitioner, by virtue registered sale deed dated
21.08.2004 executed on the strength of power of attorney of
the wife of the petitioner in his favour. Further case of the
plaintiff is that after purchase of 02 Kathha 11 ¼ Dhurs of the
suit land the plaintiff constructed a double storied house over it.
On the request of the defendant-petitioner the plaintiff inducted



him as a tenant in the newly constructed house on monthly rent of Rs. 4000/- per month. As per the plaintiff the tenancy agreement was also executed between the parties on 06.09.2005. The suit for eviction has been filed on the composite ground of default in payment of rent and on the ground of personal necessity.

Learned counsel for the defendant-petitioner submits that after commencement of the trial and after examination of four plaintiff witnesses an amendment petition has been filed by the plaintiff which is hit by the proviso of Order 6 Rule 17 of the C.P.C. but the learned trial court without assigning reason has allowed the amendment. He further submits that in the amendment petition the reason for bringing the amendment has been stated that it is being brought for bringing further development based upon the written statement filed by the petitioner- defendant whereas, according to learned counsel the written statement was filed on 24.02.2014 but amendment petition has been filed after much delay on 23.08.2017. He further submits that sale deed was not executed in favour of the plaintiff by the defendant but the fact of the matter is that there was a talk of sale of 11 ¼ Dhurs of the land and on the basis of that talk a forged and fabricated sale deed has been prepared



with the help of Deed Writer and the entire area of land measuring 2Katha 11.5 dhurs has been included in the two sale deeds.

In reply, learned counsel for the respondent-plaintiff submits that the amendment is explanatory in nature. It will not change the nature of the suit as it has only been clarified by plaintiff that the total area of the land was 3 Katha 11¼ Dhur belonging to one Umashankar Singh and the wife of defendant -tenant purchased 2 Katha of land from Umashankar Singh and 1 Katha 11¼ dhur of land from Badrinarayan Gupta. Out of that, 19 Dhur of land was transferred by the defendant in favour of his brother by virtue of sale deed upon which they have constructed their houses and are residing therein and 2 Katha 11¼ dhur was sold in favour of plaintiff by way of registered sale deed.

I have heard learned counsel for the parties and have perused the material on record. It is an admitted position that the suit is for eviction. The claim of the plaintiff is that he has purchased the suit land by virtue of registered sale deed and has constructed house over it. In support of his submission learned counsel has relied upon the tenancy agreement dated 06.09.2005 between the plaintiff and the defendant-petitioner. By way of



amendment the petitioner has traced previous title of the suit land and has merely stated that it was purchased by the defendant from Umashankar Singh and Badrinarayan Gupta. I find force in the argument of learned counsel for the plaintiff that the amendment is explanatory and clarificatory in nature and the same will not change the nature of the suit. It is settled legal proposition that in a suit for eviction question of title to the property is not germane and may be examined incidentally but cannot be decided finally. The existence of tenant and landlord relationship and grounds for eviction are mainly decided in the eviction suit. The Supreme Court in the case of Chander Kanta Bansal versus Rajinder Singh Anand reported in (2008) 5 SCC 117 has held that “whether a party has acted with due diligence or not would depend upon the facts and circumstances of each case. This would, to some extent, limit the scope of amendment to pleadings, but would still vest enough powers in courts to deal with the unforeseen situations whenever they arise. Therefore, it is not a complete bar nor shuts out entertaining of any later application”.

In view of the attending facts involved in the case and in order to advance the cause of justice, in my opinion, the impugned order dated 10.01.2018 passed in Eviction Suit No.



5 / 2012 does not require any interference by this court.

In the result, the application stands dismissed.

(Anil Kumar Sinha, J)

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