

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1410 of 2018

1. Nirmal Kumar s/o late Chaudhary Sao @ Chaudhary Prasad r/o mohalla Jairam Bazar, Khagaul, PS Khagaul District Patna.
2. Om Prakash s/o late Baij Nath Prasad. r/o mohalla Jairam Bazar, Khagaul, PS Khagaul District Patna.
3. Arun Kumar s/o Sidharth Prasad @ Surendra Kumar. r/o mohalla Jairam Bazar, Khagaul, PS Khagaul District Patna.
4. Sri Naveen Kumar @ Papu s/o late Nand Kumar, r/o mohalla Jairam Bazar, Khagaul, PS Khagaul District Patna.

... .. Petitioner/s

Versus

- 1.1. Most. Shanti Devi w/o late Shri Dharmapal Prasad r/o Nauza Daudour, PO Danapur, District Patna, at present r/o mohalla Jairam Bazar, Khagaul, PS Khagaul, District Patna.
- 1.2. Shatish Kumar s/o late Shri Dharmpal Prasad r/o Nauza Daudour, PO Danapur, District Patna, at present r/o mohalla Jairam Bazar, Khagaul, PS Khagaul, District Patna.
- 1.3. Sadashiv Kumar s/o late Shri Dharmpal Prasad r/o Nauza Daudour, PO Danapur, District Patna, at present r/o mohalla Jairam Bazar, Khagaul, PS Khagaul, District Patna.
- 1.4. Sangeeta Devi @ Nilu Shree @ Baby Devi d/o late Shri Dharampal Prasad r/o Nauza Daudour, PO Danapur, District Patna, at present r/o mohalla Jairam Bazar, Khagaul, PS Khagaul, District Patna.
- 1.5. Sweta Devi @ Minu Shree @ Minu Devi d/o late Shri Dharampal Prasad r/o Nauza Daudour, PO Danapur, District Patna, at present r/o mohalla Jairam Bazar, Khagaul, PS Khagaul, District Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Chandra Kant, Adv.
For the Respondent/s	:	Mr. Ganpati Trivedi, Sr. Adv.
		Mr. Gautam Shah, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

7 29-11-2022 Heard Mr. Chandrakant, learned counsel for the petitioners and Mr. Ganpati Trivedi, learned counsel appearing for the respondents.

2. The petitioners are the defendants and their eviction has been sought by the respondents-plaintiffs by filing the Title



Suit No. 6 of 1996 on the ground of personal necessity as well as default in payment of rent.

3. The petitioners are aggrieved by the order dated 27.07.2018 passed by learned Civil Judge J.D. (Munsiff), Danapur by which the amendment to the written statement sought by the petitioners – tenant at the fag end of the suit has been dismissed holding that the proposed amendment is not related with the issue involved in the case because the present case has been filed for eviction of the tenant from the suit premises and the suit totally depends upon the relationship between landlord and tenant. Admittedly evidence of both the parties in the suit has come to end and the suit is fixed for argument. At the stage of argument of the suit, the petitioners filed a petition for amendment of the written statement to add certain portion of the judgment passed by the learned District Appellate Court in Title Appeal No. 16/2012 in order to establish the title of the defendants-petitioners upon the suit premises.

4. The brief facts of the case is that the respondents-plaintiffs filed Title Eviction Suit No. 6 of 1996 seeking eviction of the petitioners from the suit premises. During pendency of the suit the petitioners filed a Title Suit bearing Title Suit No.



29/2000 against the plaintiffs / respondents of the present case for declaration of title over Schedule-I property, which is a building and for recovery of possession over Schedule II property, which is part of Schedule I property. The suit filed by the petitioners – tenants was dismissed on contest by the judgment of learned Sub Judge II, Danapur on 21.02.2012. Aggrieved by the same, petitioners preferred Title Appeal No. 16 / 2012 and the appeal preferred by the petitioners also got dismissed on contest. According to the petitioners Second Appeal against such judgment is pending before the this Court.

5. Learned counsel for the petitioners submits that petitioners have got title over the suit / tenant premises and if amendment is not allowed, they will be prevented from bringing subsequent events regarding their title inasmuch as while deciding the Issue No. VII the Distt. Appellate Court (i.e. A.D.J. VIIth, Danapur) in Appeal No. 16 / 2012 has arrived at the finding that the “parties were in joint possession over the suit property and it cannot be said that the plaintiff is in exclusive possession over the suit property and occupation of the defendant in Schedule- II property is not as a tenant”. To substantiate his arguments learned counsel submits that in the case of Lal Chandra Agrawal vs. Sri Rajkishore & Anr.



Reported in 2012 (2) PLJR 661 this Court has held that subsequent event should be allowed by way of amendment. He also relies upon another judgment reported in AIR 2006 SC 1647 Rajesh Kumar Aggarwal & Ors. v. K.K. Modi & Ors. for the proposition that while considering the application for amendment the Court should not go into the correctness or falsity of the case under amendment.

6. On the other hand, learned senior counsel for the respondents / landlords submits that amendment sought by the petitioners is malafide. The proposed amendment is not related with the issue involved in the case and by seeking amendment petitioners-tenants are trying to delay the disposal of the eviction suit, which is pending since 1996. He further submits that the petitioners have picked -up one or two lines from the judgment of the learned lower Appellate Court in order to show that the petitioners have title upon the tenanted premises. Title cannot be decided in a suit for eviction particularly when the petitioners have independently filed a suit seeking declaration of their title upon the suit premises which has been dismissed on contest.

7. The assertion made by the petitioners in Title Suit No. 29 / 2000 that the defendants (i.e. plaintiff here) is the



tenant of the petitioners in Schedule II property, which is part of Schedule -I property, has been disbelieved and the trial court has found that the claim of the plaintiffs / petitioners that the defendants / respondents were stranger and they were residing in Allahabad and inducted as a tenant in Schedule -II property was not correct. The Distt. Appellate Court arrived at a conclusion that that findings of the learned trial court was correct and the same do not require any interference by the appellate court.

8. I have heard learned counsel for the parties. Petitioners are defendants in the suit for eviction filed by the respondents-plaintiffs in the year 1996 for eviction of the petitioners under the B.B.C. Act 1982, on the ground of personal necessity as well as default in payment of rent. It is settled law that the question of title over the suit premises is not germane for decision of the eviction suit the reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of landlord and tenant in relation to the suit premises and further proves existence of any ground on which eviction is sought under the Tenancy Act, the eviction suit succeeds. (See judgment reported in 2018 (2) PLJR (SC) 15 Kanaklata Das & Ors. vs. Naba Kumar Das). The Hon'ble



Supreme Court in a judgment reported in Dr. Ranbir Singh versus Asharfi Lal (1995) 6 SCC 580 has held that in an eviction suit the question of title to the property is not germane and may be examined incidentally but cannot be decided finally in the eviction suit.

9. In the present case petitioners tried to establish their title upon the suit premises by filing separate suit in which the petitioners failed. The appeal preferred against the trial court judgment by the petitioners has also been dismissed by the learned District appellate court affirming the judgment of the trial court.

10. The Hon'ble Supreme Court in an another judgment reported in Revajeetu Builders and Developers *versus* Narayanswamy and Sons (2009) 10 SCC 84 has held that the Courts have very wide discretion in the matter of grant or refusal of amendments in the pleadings but the Court's power must be exercised judiciously and with great care. While deciding applications for amendments the Courts must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide, worthless and / or dishonest amendments. The first condition laid down by the Hon'ble Supreme Court is that the Courts must be satisfied before the



amendment is allowed by it as to whether such amendments are necessary for determination of the real question in controversy. If that condition is not satisfied, the amendments cannot be allowed. The Supreme Court further held this is the basic test which should govern the Court's discretion to grant or refuse the amendments. The learned trial court while rejecting the prayer of the petitioners for amendment of the written statement has arrived at the conclusion that amendments are not related with the issue of this case.

11. In view of the aforesaid it appears that the petitioners are trying to raise the question of title by bringing the amendments which they miserably failed to establish before the trial court as well as the appellate court. In a case where a plaintiff institutes a suit for eviction of his tenant based upon the relationship of landlord and tenant, the scope of the suit is very much limited in which the question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the contract of tenancy. In a suit for eviction based on such relationship, the Court has only to decide whether the defendant is a tenant of the plaintiff or not, though the question of title is disputed, for determining the main question of relationship.



12. In view of the aforesaid discussions and the law laid by the Hon'ble Supreme Court and the facts involved in the case, in my opinion, the judgment relied upon by the petitioners is not applicable in the facts of the case. In Revajeetu Builders Case (Supra) the Supreme Court has held that the Court is to be satisfied if the amendment is necessary for determination of the real question in controversy. The real question in controversy in the present case is relationship of landlord and tenant between the parties and not the independent title of the defendants-petitioners. Accordingly, I come to the conclusion that the amendment petition filed by the petitioners is not necessary for determination of the real question in controversy between the parties. The learned trial court has rightly rejected the petition filed by the petitioners for amendment holding that the proposed amendment is not related with the issue involved in this case.

13. In the result, no interference with the impugned order is required by this Court. Accordingly, this application is dismissed.

(Anil Kumar Sinha, J)

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