

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2004 of 2017**

1. Safali Pal, W/o Late Ajay Kumar Paul
2. Ashim Paul, Son of Late Ajay Kumar Paul
3. Rahul Paul, son of Late Ajay Kumar Paul
4. Pampa Paul, D/o Late Ajay Kumar Paul
6. Sanjit Kumar Paul, S/o Late Debendra Chandra Paul
7. Banchha Rani Paul, W/o Late Debendra Chandra Paul
All residents of Mohalla - Khuskibag, P.S. Sadar, District - Purnea.

... .. Petitioner/s

Versus

Jiyauddin son of Sayouddin Resident of Mohalla Lalbagh, Near Sadar Thana
City, P.S. - Sadar, Distt. - Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sushanta Kumar Das, Advocate
For the Respondent/s : Mr.Ravindra Kumar Choudhary, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 20-06-2024

Heard learned counsel for the petitioners as well as
learned counsel for the respondent.

2. The present petition has been filed under Article
227 of the Constitution of India for quashing the order dated
10.07.2017 passed by learned Sub Judge-1st, Purnea in Title
Suit No. 213 of 2014 by which part amendment sought in the
plaint by the petitioners has been rejected.

3. The learned counsel for the petitioners submits that
the petitioners, who are plaintiffs before the learned trial court,
moved an application dated 14.07.2016 for making certain



amendments in the plaint. The plaintiffs sought to bring on record the following amendments :

“That in Para-2 of the plaint towards the end of at page 3 the word “there” in between the word “mutated” and “name” be deleted and in that place “there” be inserted.

That similarly in para 2 at page 3 in 2rd line after the word before, the word the ‘present’ be inserted.

That similarly end of the para 8 the following words be added “That the plaintiff inducted the defendant as mouth to mouth tenant in present of (1) Sri Nani Gopal Dutta, S/o Late Loknath Dutta resident of Khuskibag near Panitanki, District-Purnea (2) Jivan Chandra Pal, S/o late Rukhi Chandra Pal resident of Khushhibag Hat in the back of Masjid, District- Purnea.

8 (A) That claim of the defendant that the defendant has purchased the suit property from Amanullah is absolutely wrong, false and the kebala if any forged and fraudulent document. The Amanullah had no right to execute register sale deed in respect of the suit land in favour of the defendant.

That charge officer of Purnea survey in case no. 557/90 of ward no.17 held finally that Amanullah by making from interpolation



in the record wanted to claim the suit land which was refused by order dated 05.11.1990 and certified copy of the said order is also filed before your honour”.

4. The learned counsel for the petitioners further submits that the learned trial court refused to allow amendments sought to be incorporated in paragraph 8 and also the amendment by way of introducing paragraph ‘8A’ on the ground that these amendments are not in the form of pleading, rather they would fall under the category of evidence and would be barred under the provisions of Order 6 Rule 2 of the Code of Civil Procedure and thus, rejected these two amendments. Rest of the amendments have been allowed. The learned counsel further submits that the learned trial court erroneously rejected part amendments without considering the fact that these amendments are clarificatory in nature and do not change the nature of suit. No new facts were being introduced by these amendments. Further the amendments sought are quite necessary for deciding the real controversy between the parties. The suit is at the early stage and evidence is yet to be led by the parties. Thus, learned counsel submits that the impugned order is not sustainable and the same be set aside and the amendment petition be allowed.



5. The learned counsel appearing on behalf of the respondent vehemently opposes the submission made on behalf of the petitioners. The learned counsel for the respondent submits that the learned trial court has rightly rejected certain portion of amendments sought to be incorporated on behalf of the plaintiffs. These amendments were in the form of evidence and the plaintiffs in the garb of amending their plaint have tried to introduce their evidence in pleadings. The learned counsel further submits that the respondent has no objection to other amendments which have been allowed.

6. From perusal of record, I find that the amendments sought to be incorporated on behalf of the plaintiffs in second paragraph of paragraph 1 of the amendment petition could not be allowed as the same runs counter to Order 6 Rule 2 of the Code of Civil Procedure. The same goes with second part of the amendment sought to be incorporated by introducing paragraph 8A. Therefore, the following amendment could not be allowed:-

(a) That similarly end of the para 8 the following words be added "That the plaintiff inducted the defendant as mouth to mouth tenant in present of (1) Sri Nani Gopal Dutta, S/o Late Loknath Dutta resident of Khuskibag near Panitanki, District-Purnea (2) Jivan Chandra Pal, S/o



*late Rukhi Chandra Pal resident of
Khuskhibag Hat in the back of Masjid,
District- Purnea.*

*(b). That charge officer of Purnea survey in
case no. 557/90 of ward no.17 held finally that
Amanullah by making from interpolation in the
record wanted to claim the suit land which was
refused by order dated 05.11.1990 and certified
copy of the said order is also filed before your
honour”.*

However, I do not find anywhere in the impugned order that first paragraph of paragraph 8A had been rejected, though second part of paragraph 8A has been quoted by the learned trial court.

7. Considering the fact that the first part of paragraph 8A appears relevant amendment for the purpose of deciding the real question of controversy between the parties and the trial is at an early stage, the said amendment should have been allowed.

8. Accordingly, the impugned order dated 10.07.2017 would be read and understood in the sense that first part of paragraph 8A, i.e., *“That claim of the defendant that the defendant has purchased the suit property from Amanullah is absolutely wrong, false and the kebala if any forged and fraudulent document. The Amanullah had no right to execute*



register sale deed in respect of the suit land in favour of the defendant”, shall be allowed to be incorporated in the plaint of the plaintiffs along with other amendments already allowed by the learned trial court. Hence, the impugned order stands modified to this extent.

9. However, the respondent/defendant will be given ample opportunity to rebut/controvert the claim of the plaintiffs/petitioners sought to be brought through the amendment by way of filing amended written statement/additional written statement.

10. With the aforesaid observations and directions, the instant petition is partially allowed and disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2024
Transmission Date	NA

