

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.84 of 2024

1. Pramod Kumar Jalan Son of Late Murari Jalan @ Murarilal Jalan Resident of Mohalla-Sudamajeet Market, Bari Path, P.S.- Pirbahore, Distirct-Patna. At Present R/o Mohalla-Bakerganj, Nageshwar Colony, Arya Kumar Road, P.S.-Gandhi Maidan, District-Patna.
2. Ajay Kumar Jalan Son of Late Murari Jalan @ Murarilal Jalan Resident of Mohalla-Sudamajeet Market, Bari Path, P.S.- Pirbahore, Distirct-Patna. At Present R/o Mohalla-Bakerganj, Nageshwar Colony, Arya Kumar Road, P.S.-Gandhi Maidan, District-Patna.

... .. Petitioner/s

Versus

1. Smt. Anita Devi Wife of Arun Kumar Resident of Mohalla-Birla Mandir Road, P.S.-Pirbahore, District-Patna.
2. Bhola Prasad Son of Late Jittu Sao Resident of Mohalla-Birla Mandir Road, P.S.-Pirbahore, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Siddharth Harsh, Advocate
For the Respondent/s	:	Mr.Ranjan Kumar Dubey, Advocate
		Mr. Kumar Gaurav, Advocate
		Mr. Shashank Kashyap, Advocate
		Mr. Ashish Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 17-06-2025

The instant civil miscellaneous petition has been filed for setting aside the order dated 08.01.2024 passed by learned Munsif-I, Patna Sadar in Eviction Suit No. 23 of 2011, whereby and whereunder the learned trial court has rejected the amendment petition filed under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure (in short ‘the Code’) by the defendants/petitioners.

2. Briefly stated, the facts of the case are that the suit



property is holding No. 137 of Patna City appertaining to Plot Nos. 818, 819 and 820 having area of 1274 Sq. feet situated at Mohalla Bakerganj, P.S. Pirbahore, District – Patna. The said land originally belonged to one Sudama Prasad Singh and old municipal survey khatiyani with respect to the entire holding No. 137 stood prepared in the name of Sudama Prasad Singh. Sudama Prasad Singh had one son, namely Ajit Kumar Singh and Ajit Kumar Singh had five children, namely Tribhuwan Kumar Singh, Madandhari Sharma, Ashok Kumar Singh, Kumkum Devi and Rani Sinha. Sudama Prasad Singh and Ajit Kumar Singh died leaving behind all their heirs in jointness. It transpires that a double storied building has been constructed on holding No. 137 having five shops on ground floor and three shops on first floor. The petitioners claim to be occupying one shop of about 255 Sq. feet at ground floor and another shop of same area at first floor since 1996 under the tenancy of heirs of Ajit Kumar Singh jointly. The plaintiffs/respondents have also been occupying two shops at ground floor having area of about 600 Sq. feet and also occupying one shop at first floor having area of about 150 Sq. feet prior to 1990 under the tenancy of joint family of Ajit Kumar Singh. Now Ashok Kumar Singh died leaving behind one son Prince Kumar and two daughters,



namely Beuty Kumari and Sweeti Kumari. Madandhari Sharma has three sons, namely Rakesh Kumar, Mukesh Kumar and Rishikesh Kumar. Tribhuwan Kumar Singh died leaving behind two sons and a daughter, namely Sanjay Kumar, Manoj Kumar and Poonam Kumari. Further, Mukesh Kumar has two sons, namely Abhishek Ranjan and Amritesh Ranjan whereas Sanjay Kumar has four daughters, namely Shikha Kumari, Neha Kumari, Sneha Kumari and Anisha Kumari.

3. The plaintiffs/respondents purchased part of the holding through three sale deeds. First sale deed was executed by Prince Kumar vide Deed No. 11390 on 23.06.2008, second sale deed was executed on the same day by Madandhari Sharma and Rakesh Kumar vide Deed No. 11391 and third sale deed was executed by Manju Devi and Manoj Kumar vide Deed No. 16485 on 13.06.2011. The plaintiffs claimed that in this manner plaintiffs/respondents purchased only 4/15th share while they have already been occupying 6/15th share which is greater than their purchased area. After execution of two sale deeds both dated 23.06.2008, the plaintiffs filed Eviction Suit No. 23 of 2011 against the petitioners for their eviction from the shop on the ground of default in payment of rent and personal necessity. The defendants/petitioners appeared and filed their written



statement denying the landlord and tenant relationship and it has also been submitted in the written statement that a Title Partition Suit No. 232 of 2011 was already filed by Rani Sinha and Sikha Kumari impleading all the heirs of Ajit Kumar Singh for partition of their share in the present suit property. During the pendency of the eviction suit, the defendants/petitioners also purchased 1/5th share of Rani Sinha by way of sale deed No. 277/17 dated 20.10.2012. The defendants/petitioners also filed a petition on 26.11.2012 seeking amendment in the written statement that by virtue of purchase of share of Rani Sinha defendants have become co-sharers. The learned trial court vide order dated 17.07.2013 allowed the amendment petition of the defendants and rejected the petition dated 10.04.2012 of the plaintiffs/respondents under Section 15 of the Bihar Buildings (Lease, Rent & Eviction) Control Act (in short 'the BBC Act') seeking direction to the defendants to pay the arrears of rent. The plaintiffs being aggrieved by the order 17.07.2013 passed by learned trial court, preferred C.W.J.C. No. 20819 of 2013 which was allowed in terms of the impugned order dated 19.09.2017. The petitioners/defendants then filed Civil Review No. 198 of 2023 against the said order dated 19.09.2017 and the same is pending consideration before this Court. Meanwhile,



one Title Suit No. 60 of 2009 was filed by one of the plaintiffs, namely Bhola Prasad, against the heirs in branch of late Tribhuwan Kumar Singh and Madandhari Sharma with the relief of specific performance of contract in respect of holding in question. During pendency of this suit, Manoj Kumar Son of late Tribhuwan Kumar Singh, sold his share in favour of Bhola Prasad. However, the suit was decided on merits with respect to liability of other persons and the learned Sub Judge-II, Patna decided the suit on 09.08.2017 in favour of Sanjay Kumar and other defendants holding that there has not been previous partition amongst the heirs of Ajit Kumar Singh and the plaintiff Bhola Prasad was not entitled to decree of specific performance of contract. The defendants/petitioners came to know about the judgment dated 09.08.2017 passed in Title Suit No. 60 of 2009 in the month of August, 2022 after getting the copy of the same from Sanjay Kumar Singh who has also filed Eviction Suit No. 75 of 2022 against Bhola Prasad for his eviction from 220 Sq. feet of present holding and the said suit is also pending consideration. In the light of subsequent developments, the defendants/petitioners filed an amendment petition on 04.10.2023 bringing on record the developments which took place during pendency of the suit. The plaintiffs/respondents



filed rejoinder on 31.10.2023. However, the amendment application of the petitioners was rejected by the learned trial court in terms of order dated 08.01.2024. The said order is under challenge before this Court.

4. Learned counsel for the petitioners submitted that the impugned order is not sustainable as the learned trial court utterly failed to consider the fact that the petitioners have been trying to bring on record the subsequent development which they came to know recently. Learned trial court did not appreciate the fact that allowing the amendment with regard to subsequent development would not change the nature of the suit. Learned trial court has erroneously rejected the application for amendment holding that the amendment is not going to decide the real question in controversy. Learned trial court has failed to take into consideration the submission of the petitioners that from the very beginning they are claiming that there is no relationship of landlord and tenant between the plaintiffs and the defendants and the plaintiffs are not the owners of the premises in question. Learned trial court proceeded on *a priori* assumption that the facts sought to be brought through amendment are not relevant to the issue involved in the suit. Therefore, it was too early for the learned



trial court to hold that the amendment was not going to decide the real question in controversy. Amendment sought was not for any subsequent relief but only to bring the record the subsequent development with respect to the suit property between the parties and the same needs to be allowed even if nature of the suit changes. Thus, learned counsel submitted that the impugned order needs to be set aside by this Court.

5. Learned counsel appearing on behalf of the respondents vehemently contended that there is no merit in the present civil miscellaneous petition and the same is fit to be dismissed. Learned counsel for the respondents submitted at the outset that earlier the same petitioners filed an application for amendment that they are the co-sharers after purchasing the property by way of sale deed dated 20.10.2012 from Rani Sinha. The learned Single Judge of this Court in C.W.J.C. No. 20819 of 2013 and 21247 of 2023 vide order dated 19.09.2017 unequivocally held that the question of title of the parties of the suit premises is not relevant having regard to the width of the definition of the terms 'landlord' and 'tenant' in clauses (f) and (h) of Section 2 of the BBC Act and the court while deciding eviction suit cannot decide the question of title. Failing in their earlier attempt, the petitioners have again come up with another



plea with regard to disposal of Title Suit No. 60 of 2009. which has no relevance at all for the purpose of determination of real controversy between the parties. Moreover, in the said judgment, no new rights have been conferred upon the petitioners. The said suit was filed for specific performance of contract and all the defendants except one executed sale deeds in favour of the respondent Bhola Prasad, the learned trial court recorded a finding that the plaintiff was not entitled for specific performance of contract against defendant no. 2 Sanjay Kumar. Further, the suit property was also different. In the present case, the learned trial court is required to examine whether there exists any landlord tenant relationship between the parties and whether any of the grounds seeking amendment is established or not. Claim of the respondents is based on registered sale deed and it is not contingent upon any agreement to sale being executed. Admittedly, the petitioners were tenants of the vendors of the respondents and when the sale deed was executed, the petitioners were in possession of the suit property in their capacity as tenant. Therefore, by operation of law, the petitioners became the tenants of the respondents irrespective of the fact that whether they atorned the plaintiffs/respondents as landlord or not. Moreover, the sale deeds have never been



challenged. Learned counsel further submitted that even the vendor of the petitioners, namely Rani Sinha is also signatory on partition deed and no co-sharer has supported the case of the petitioners and none of them challenged the deeds executed in favour of the respondents. Learned counsel further submitted that the eviction suit was filed in the year 2011 and the defendants have avoided the disposal of the suit for almost 14 years. It is only a delaying tactics of the petitioners. Learned counsel further submitted that no subsequent events had taken place in respect of suit property and it is obvious that the present suit has been filed in the year 2011 on the basis of sale deeds executed in the year 2008. But the amendment sought is totally irrelevant, absurd and malafide. By seeking the amendment, the petitioners want to challenge the title of the respondents without any *locus standi* and the same could not be allowed.

6. In support of his contention, learned counsel relied on the decision of Hon'ble Supreme Court in the case of ***Rajendra Tiwary v. Basudeo Prasad and Another***, reported in ***AIR 2002 SC 136*** wherein the Hon'ble Supreme Court held that the existence of relationship of landlord and tenant between the parties is *sine qua non* for granting relief and question of title of the parties to the suit premises is not relevant and is beyond the



scope of court exercising jurisdiction under the Act. Learned counsel next referred to the decision of ***T. Lakshmipathi & Ors Vs P. Nithyananda Reddy & Ors***, reported in ***AIR 2003 SC 2427*** and in paragraph 24 of the said case the Hon'ble Supreme Court held that as under:-

*“24. In the facts and circumstances of the case, no defence or shelter is available to the appellants behind the plea that they have acquired interest of some of the co-owners. The law as to co-owners is well settled. Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other owners. One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and he does so he may be restrained by an injunction. A co-owners may, by an arrangement, expressed or implied, with his other co-owners, possess and enjoy any property exclusively. Such a co-owner can also protect his possession against the other co-owners and if he is dispossessed by the latter, he can recover exclusive possession. (see *Jahuri Sah v. Dwarika Prasad Jhunhunwala* (1966) Supp SCR 280). It is beyond any controversy that*



on the death of late P. Narayan Reddy, his rights devolved upon the several heirs including respondent No. 1. The respondent No. 1 is the only male person in the body of the co-owners, all others being women. It may be for this reason, or otherwise, that the respondent No. 1 was in possession of the property, through tenants, realizing the rent peacefully and with the consent, expressed or implied, of other co-heirs of late P. Nithyananda Reddy. So far as the respondents Nos. 2 and 3 are concerned, by operation of S. 116 of the Evidence Act, they were estopped from challenging or denying the ownership of the respondent No. 1 and his rights in the tenancy premises. As held in Vasudeo v. Balkishan, (2002) 2 SCC 50, the rule of estoppel between landlord and tenant continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord. The estoppel would cease to operate only on the tenant openly restoring possession by surrender to the landlord. Neither the respondents Nos. 2 and 3 nor their successors in interest or the persons claiming under could have denied the title of the respondent No. 1 during the continuance of the tenancy and even thereafter unless they had restored possession over the



tenancy premises to the respondent No. 1. Looking at the status of the appellants whether as co-owners or as persons inducted in possession by the tenants they have no legs to stand on. If other co-owners could not have dispossessed the respondent No. 1 or demolished the property without the consent of respondent No. 1 it is difficult to conceive how their transferees could have demolished the tenancy premises and raised their own construction over the land on which the tenancy premises stood earlier.”

7. Thus, learned counsel submitted that the petitioners were admittedly the tenants of heirs of Ajit Kumar Singh and the respondents became landlord after purchase of the right, title and interest from these co-sharers who are all male members and it has not been in dispute that they were in possession. Lastly, learned counsel referred to the decision of ***M/s. Revajeetu Builders & Developers Vs M/s. Narayanaswamy & Sons & Ors***, reported in ***2009 AIR SCW 6644*** in support of his contention that the amendments are not at all necessary for proper adjudication of the case wherein the Hon'ble Supreme Court in paragraph 67 came up with basic principles for allowing or rejecting the application for amendment which reads as under:-



“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment sought not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

Thus, learned counsel submitted that the impugned order does not need any interference from this Court.

8. By way of reply learned counsel for the petitioners submitted that the respondents themselves were tenants earlier



and it is a fact that they did not purchase the entire area of the suit land. Moreover, the respondents have been occupying more than their purchased area. Therefore, the claim against the petitioners is not sustainable with regard to eviction.

9. I have given my thoughtful consideration to the rival submission of the parties and perused the record. By moving the application dated 04.10.2023 which has been filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, the petitioners are seeking following amendment:-

“(i) After Para No. 8A and before Para No. 9 a new Para as Para No. 8B, be permitted to be added.

8B. That the plaintiff no. 2 Bhola Prasad of this suit had filed Title Suit No. 60 of 2009 against the sons of Late Tribhuwan Prasad Singh namely Manoj Kumar alias Ranjan Kumar Sharma, Sanjay Kumar alias Pappu Sharma and others to pass a decree for specific performance against them. The plaintiff of this suit had filed a document of partition dated 24.05.2008 alleging it to be the document of partition of the family of his vendors. The said document was marked as exhibit-2 in said Title Suit No. 60 of 2009.



The learned Sub Judge had given it finding that the partition deed dated 24.5.2008 is not valid document because the claimed deed of partition dated 24.5.2008 does not incorporate all share holders of the joint family property. The learned Sub Judge thereafter considered the facts and circumstances of the case, dismissed the said Title Suit No. 60 of 2009 vide judgment and decree dated 9.8.2017.”

10. What the petitioners seek to achieve by moving the aforesaid amendment is quite perplexing. The petitioners want to insert the observation made by the court of learned Sub Judge about document of partition dated 24.05.2008 within the family of vendors of the respondents. Now, what could be relevance of such document for the purpose of decision of the present case? It is a suit for eviction and the respondents have their claim of right, title and interest over the suit property by virtue of sale deeds executed by the co-sharers. In this regard the observation of learned Single Judge made in order dated 19.09.2017 in C.W.J.C. Nos. 20819 of 2013 and 21247 of 2023 in paragraph 9 is quite relevant and extracted hereinafter:-

“(9) In the present case, admittedly on the date of purchase i.e. in the year 2008 the plaintiffs stepped into the shoes of the



original landlord. Therefore, the defendants became tenant under the plaintiffs. Now, because of subsequent purchase by them from Rani Sinha their status will not change unless the sale deed of the plaintiff is declared not binding on Rani Sinha or that title of the entire suit property did not vest to the plaintiffs or that two sons of the original landlord has no authority to transfer the suit property particularly when admittedly the partition suit is pending wherein except this suit premises there are other properties also.”

11. When the outcome of Title Suit No. 60 of 2009 is not going to affect the status of the parties or the nature of the suit property, seeking amendment of such nature only amounts to putting spanner in disposal of eviction suit. Learned trial court has rightly held that amendment sought for is not necessary to decide the real question in controversy as the same would not enable the court to decide the question of landlord tenant relationship between the parties or whether the plaintiffs/respondents have been able to prove the grounds of eviction. Since the amendment is not at all necessary for deciding the aforesaid issues, having regard to the guidelines in the case of ***M/s. Revajeetu Builders & Developers Vs M/s.***



Narayanaswamy & Sons & Ors (supra) it could be safely concluded that the amendment does not appear necessary for decision of the controversy between the parties and appears to be malafide.

12. The contention raised by learned counsel for the petitioners about respondents being in possession of more than their purchased area or the respondents being earlier tenants could not affect the nature of the suit which is for eviction and the plaintiffs are required to prove that they are landlord and they have valid grounds for seeking eviction.

13. In the light of aforesaid discussion, I am of the considered opinion that there is no error of jurisdiction in passing the impugned order by the learned trial court and hence, the order dated 08.01.2024 is affirmed. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	17.04.2025
Uploading Date	17.06.2025
Transmission Date	NA

