

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.960 of 2023

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Rameshwar Prasad Son of Nanhak Yadav Resident of Village- Barky Bahang,
P.S.- Magadh University, District- Gaya.

... .. Petitioner/s

Versus

1. Mahesh Yadav Son of Nanhak Yadav Resident of Village- Barky Bahang,
P.S.- Magadh University, District- Gaya.
2. Smt. Baliya Devi Wife of Rameshwar Prasad Resident of Village- Barky
Bahang, P.S.- Magadh University, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sharda Nand Mishra, Advocate Mr. Deepak Kumar, Advocate Mr. Dhananjay Kumar Gupta, Advocate Mr. Bishwanath Prasad Mahto, Advocate Mr. Dhandev Kumar, Advocate Mr. Atul Kumar, Advocate
For the Respondent/s	:	Mr. Ram Shankar Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 11-04-2025

Heard learned counsel for the parties.

2. The petitioner is aggrieved by the order dated 07.02.2019 passed by learned Munsif-II, Gaya in Title Suit No. 05 of 2004, whereby and whereunder certain amendments proposed by the plaintiff/petitioner have been allowed and certain proposed amendments have been disallowed.

3. Learned counsel for the petitioner submits that the petitioner is plaintiff before the learned trial court along with respondent no. 2 and the petitioner has filed Title Suit No. 05 of 2004 seeking relief for declaration that the plaintiffs are owners



of Schedule -A property and further for relief of delivery possession with respect to Schedule-B property and also for other reliefs with regard to suit property appertaining to Khata No. 2, Plot No. 118, area 1.11 acre, Village – Badki, Badni, Police Station – Bodh Gaya, District – Gaya. The suit property was the purchased property of the father of the petitioner and respondent no. 1 is the brother of the petitioner who got separated from his father and brother way back in the year 1976 taking his share in the properties. The wife of the petitioner had been taking proper care of her father-in-law, the father of the petitioner executed a deed of gift dated 08.02.1977 with respect to aforesaid Plot No. 118 in favour of the petitioner and respondent no. 2, who is wife of the petitioner. On 04.01.2004, the defendant/respondent no. 1 forcibly took possession of 0.60 acre land of Plot No. 118 claiming that he was having half of the share in the suit property. During pendency of the suit, the petitioner filed an application under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure for amendment of the plaint. Rejoinder was filed by the defendant/respondent no. 1 contesting the claim of the plaintiff/petitioner.

4. The learned trial court after hearing the parties partly allowed the amendment application. The order of rejection of



certain amendments by the learned trial court has been challenged before this Court in the present petition.

5. Learned counsel for the petitioner submits that the impugned order is not sustainable and same has been passed without consideration of facts and circumstances. The petitioner is an illiterate and rustic villager and due to some miscommunication and fault of learned counsel for the plaintiff/petitioner, some wrong facts have been mentioned in the plaint, apart from certain other facts which were not brought on record by the petitioner. Unless the facts are brought on record it could not be decided the real controversy between the parties. If the amendments which are almost formal in nature have not allowed, the petitioner will suffer irreparable loss. Thus, learned counsel submits that the amendments are necessary for deciding the real controversy between the parties and the same may be allowed and the portion of impugned order rejecting the proposed amendments needs to be set aside.

6. Learned counsel appearing on behalf of respondent no. 1 vehemently contends that there is no infirmity in the impugned order and the amendments which are formal in nature and do not affect the nature of the suit have been allowed and if any admission is sought to be withdrawn, the same have been



allowed by the learned trial court. Learned counsel further submits that respondent no. 1/ defendant has not challenged the order considering the fact that the real controversy should be decided before the learned trial court and the dispute should come to an end after adjudication. Learned counsel reiterates that the amendments which have been disallowed, relate to withdrawal of admission by the plaintiff/petitioner and the learned trial court rightly rejected the amendments on this point.

7. Having regard to the facts and circumstances of the case and going through the record, especially impugned order I hardly find any infirmity in the impugned order. The amendments which have been disallowed apparently relates to withdrawal of an admission with regard to possession of defendant/respondent no. 1 over the suit property. As the plaintiff earlier claimed that the defendant dispossessed them from 0.60 acre of suit land and consequently relief of recovery of possession has been sought. Now the proposed amendments which have been rejected are to the effect that the defendant/respondent no. 1 never came into possession of the suit land and plaintiffs are in possession and relief of recovery of possession has been sought to be deleted. The said amendments have been rejected by the learned trial court



referring to a decision of Hon’ble Supreme Court in the case of ***Modi Spinning and Weaving Mills Co. Ltd. & Anr. Vs. Ladha Ram & Co.***, wherein the Hon’ble Court held that once an admission is made in respect of certain status, it is not open to the other party to wriggle out of such a situation by retracting or withdrawing from the said admission which would be detrimental to the interest of the other side.

8. In the light of clear position of law, I do not find any infirmity in the impugned order and the same is affirmed.

9. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

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

