

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2207 of 2017

Md. Irfan, S/o Late Bashir Ahmad, Resident of Village - Bhataura, P.O. - Bhataura, P.S. - Bisfi, District - Madhubani having residential house at mohalla - Benta, P.S. - Laheriasarai, District - Darbhanga.

... .. Petitioner/s

Versus

1. Md. Ashfaq @ Ashfaq Ali, S/o Late Md. Khalil
2. Sanjida Khatoon, W/o Ashfaq Ahmad
3. Bibi Naseema Khatoon, W/o Mushtaque Ahmad, All residing at present in Rental House at Mohalla - Benta, P.O. - Laheriasarai, P.S. - Laheriasarai, District - Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Uma Shankar Singh, Adv.

For the Respondent nos.1 &2: Mr. Vishwanath Pd. Singh, Sr. Adv.

Mr. Prakash Ranjan Thakur, Adv.

Mr. Rajesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 18-02-2025

Heard learned counsel for the petitioner as well as learned senior counsel for the respondents.

2. The petitioner is aggrieved by the order dated 13.10.2017 passed in Eviction Suit No. 03 of 2012 by the learned Sub Judge-VIII, Darbhanga whereby and whereunder the amendment application filed by the present petitioner for converting his eviction suit into title suit has been rejected.

3. Learned counsel for the petitioner submits that the



impugned order is not sustainable as it has been passed against the settled proposition of law. Learned counsel referred to the decision of this Court in the case of ***Maheshwar Prasad Sharma vs. Shobha Devi, reported in (1999) 2 PLJR 148*** wherein the view has been taken that in an eviction case if a dispute arises over title, to avoid further litigation, the plaintiff should be allowed to amend the relief and he could seek declaration of title. Learned counsel further submits that this proposition of law has been ignored by the learned trial court while passing the impugned order. Learned counsel further relied on the decision of this Court in the case of ***Shashi Shekhar Pathak vs. Radha Kant Pathak, reported in (2015) PLJR 4 859*** wherein considering the previous decisions, the learned Single Judge of this Court held that even though the plaintiff has not filed the amendment petition soon after filing the written statement by the defendants and further held that on the ground of delay the amendment petition could not be rejected. Learned counsel further submits that when the respondent filed his written statement, one of the pleas taken by the respondent was that the instant suit has been filed as eviction suit but it is in fact a title suit and unless the plaintiff properly values the suit and pays ad volarem court fee thereon the present



suit could not proceed. To obviate future complications and to avoid multiplicity of litigation, the prayer for amendment seeking conversion of the eviction suit into title suit has been moved but the same was rejected by the learned trial court.

4. Learned senior counsel appearing on behalf of the respondents vehemently contends that there could be no quarrel with the proposition of law that an eviction suit can be allowed to be converted into a title suit at the instance of the plaintiff but stage is equally important. Learned senior counsel further submits that title suit has been filed in the year 2012 and the written statement was filed on 23.07.2012 and amendment application was filed after five years of filing of the written statement when the plaintiff started examining his witness. Learned senior counsel further submits that if the eviction is allowed to be converted into title suit, unnecessary complications would arise and since disputed question of title and even partition of share is involved in the matter, a number of parties would be required to be added further complicating the matter. Learned senior counsel further submits that in the given facts and circumstances, it would be proper if the petitioner takes back his plaint and file a fresh title suit mentioning all the facts. Learned senior counsel also relies on



the decision of this Court in the case of ***Shashi Shekhar Pathak*** (supra) in support of his contention.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. The impugned order has been passed on application dated 17.08.2017 filed on behalf of the plaintiff/petitioner under Order VI Rule 17 read with Order VII Rule 7 of the Code of Civil Procedure (for short 'the Code') seeking certain amendments which *inter alia* included the relief of declaration of the title of the plaintiff for the suit land against the defendant apart from other reliefs. The law on the point of conversion of an eviction suit into title suit has been settled. The learned Single Judge in the case of ***Maheshwar Prasad Sharma*** (supra) observed that where complicated question of title arises, the Court may ask the plaintiff to seek relief in a properly constituted suit or may allow the plaintiff to convert the suit into a regular title suit and decide the question of title on payment of proper court fee and in appropriate cases, grant the plaintiff the decree of eviction on the basis of title under Order 7 Rule 7 of the Code. In the case of ***Harihar Prasad vs. Biresh Manjhi*** reported in ***2001 (3) PLJR 233***, the learned Single Judge held that in a suit for eviction if title is challenged then in order to avoid further litigation, the



plaintiff can make prayer for converting his eviction suit into a regular title suit for the purpose of declaration of title and he would be required to pay ad volarem court fee. In the case of ***Balram Medical Hall vs. Rajendra Prasad*** reported in **2007 (3) PLJR 778**, the learned Single Judge made the following observation in paragraph no.32 which reads as under:-

“32. Further, in view of the provisions of Section 12 of the B.B.C. Act, even if the eviction suit was decreed, the plaintiffs may not have succeeded in executing the same against the alleged landlord who claims independent title and has been put into possession by the petitioner during the pendency of the eviction suit.”

6. Taking note of all the aforesaid decisions, the learned Single Judge of this Court in the case of ***Shashi Shekhar Pathak*** (supra) recorded a concurrent finding and made the issue more clear that even if the amendment petition has not been filed soon after the filing of the written statement, the delay could not make the petition filed for amendment liable to be rejected. Learned Single Judge further held that for just decision of the case and to avoid further litigation, the prayer of amendment ought to have been allowed. Though for delay and harassment caused to the defendant, the court may award for cost to compensate the defendants.

7. Coming back to the facts of the case, the facts are



almost similar, the defendant appeared and filed his written statement challenging the title of the plaintiff and claimed his own title over the property in contrast to the claim of the plaintiff. But the said claim was made just after the plaintiff appeared before the learned trial court on receipt of the notice and filed his written statement. It is much apparent that the plaintiff slept over the matter for almost five years and thereafter he woke up from deep slumber and filed the application for amendment seeking relief of declaration of title against the defendant apart from other amendments. The same shows the casual and neglect approach of the plaintiff. However, having regard to the decisions cited hereinbefore, in order to avoid further litigation and further complication in the matter, it would be prudent to allow the conversion of the eviction suit into title suit by allowing the amendment application of the plaintiff subject to payment of cost. Therefore, the impugned order dated 13.10.2017 passed by learned Sub Judge-VIII, Darbhanga in Eviction Suit No. 03 of 2012 is set aside and application dated 17.08.2017 filed by the plaintiff/petitioner is allowed subject to payment of cost of Rs. 25,000/- to be paid to the defendant on the first date of hearing before the learned trial court.



8. Accordingly, the instant petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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