

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1515 of 2019

1. Rang Bahadur Singh S/o Late Bharat Singh resident of village and P.O. and P.S. Aayer, Dist. Bhojpur.
2. Sanjay Kumar, S/o Late Sidh Nath Singh, resident of village and P.O. and P.S. Aayer, Dist. Bhojpur.
3. Sunita Singh, D/o Sidh Nath Singh and W/o Shri Sanjay Kumar Singh, resident of 58, Indira Nagar, Ram Nagari, P.S. Kankarbagh, District- Patna.
4. Anita Singh, D/o Sidh Nath Singh, W/o Shri Anjani Kumr Singh, C.D.A. Colony, Behind Sheo Mandir, P.O. and P.S., Shastrinagar, Patna.

... .. Petitioner/s

Versus

1. Dadan Singh S/o Vijay Bahadur Singh, resident of village Jaitpur Khurd, P.O. Jaitpur- Kala, P.S. Bhagwanpur, Dist. Kaimur, Bhabhua.
2. Dhananjay Singh, son of late Bishwanath Singh, resident of village and P.O. and P.S. Aayer, District- Bhojpur.
3. Mritunjay Singh, son of late Bishwanath Singh, resident of village and P.O. and P.S. Aayer, District- Bhojpur.
4. Sheo Pujan Singh @ Bhikhari Singh, S/o Late Kapil Muni Singh, resident of village and P.O. and P.S. Aayer, District- Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sachchida Nand Singh, Adv.
For the Respondent/s	:	Mr. Aditya Narayan Singh, Adv.
		Mr. Rama Kant Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 21-05-2025

The instant civil miscellaneous petition has been filed for setting aside the order dated 29.08.2019 by the learned Additional District Judge-12th, Bhojpur at Ara in Title Appeal No. 05/2013. whereby and whereunder the learned Appellate Court rejected the petition dated 10.12.2014 and 05.06.2018 filed by the petitioners for amendment of their plaint of Title Suit No. 09 of 2001/47 of 2010.

02. Shorn of unnecessary details, the facts of the case

are that the petitioner no. 1 and the father of petitioner no.2 and 3 were the original plaintiffs of Title Suit no. 09 of 2001 which was filed for declaration of right and title of the plaintiffs and defendant 2nd set over Schedule "क" land of the plaint and respondent 1st set was the defendant 1st set, respondent 3rd set/respondent no. 4 herein was the defendant 3rd set before the learned trial court. Apart from declaration of their right, title and interest over the suit property, the plaintiffs sought injunction for restraining the defendant 3rd set from going to the suit property. The suit was decreed in favour of the plaintiffs on 12.12.2012 against which the defendant 3rd set/respondent no. 4 preferred an appeal which is Title Appeal No. 05 of 2013 and the said appeal has been pending for disposal before the Court of learned Additional District Judge 12th, Bhojpur at Ara. Subsequently, an application has been filed by the plaintiff/petitioners under Order 6 Rule 17 of the Code of Civil Procedure (for brevity "the Code") on 10.11.2014 for making certain amendments in the plaint of Title Suit No. 09 of 2001. The respondent no. 4/respondent 3rd set filed a rejoinder on 18.04.2015. Further in continuation of the earlier amendment application, the plaintiff/petitioners filed another application seeking further amendment on 05.06.2018 and its reply was

filed by respondent no. 4 on 12.07.2018. Vide order dated 29.08.2019, the learned Additional District Judge-12th, Bhojpur at Ara dismissed both the amendment petitions and the said order is under challenge before this Court.

03. Learned counsel for the petitioners submitted that the impugned order is improper and not sustainable. The learned 1st Appellate Court committed an error when it passed the impugned order, as the said order has been passed without consideration of the facts of the case and authoritative pronouncements of the Hon'ble Supreme Court. The respondent no. 4 dispossessed the petitioners during pendency of the appeal and for this reason amendment became necessary to bring the subsequent facts on record. The learned counsel further submitted that learned trial court has misconstrued the facts of the case specially with regard to the application dated 26.08.2009 filed by the petitioners during the pendency of the title suit. On 26.08.2009, the petitioners filed a petition before the learned trial court furnishing certain information which was to the effect that respondent no. 4 had started some construction over the suit land and the petitioners got the construction stopped with the help of police. Therefore, the purpose of the application dated 26.08.2009 was nothing but to bring to the

notice of the learned trial court the information about conduct of the defendant 3rd set/respondent no. 4. Learned counsel did not consider the fact that being aggrieved by the loss in Title Suit No. 09 of 2001, the respondent no. 4, taking undue advantage of the absence of the petitioners from the village, on 24.09.2014 broke open the lock of the only room standing over the disputed land and made some construction there and dispossessed the petitioner. The learned counsel further submitted that as at the time of filing of Title Suit No. 09 of 2001, the petitioners were in possession over the disputed land and for this reason suit was filed only for declaration of title over the disputed land but due to subsequent event dated 24.09.2014 whereby the respondent no. 4 took over the possession of suit land, the petitioners were compelled to move the application for amendment to incorporate this fact in their Title Suit. For this purpose, the petitioners wanted to make amendment with regard to payment of *ad valorem* court fee as well as seeking relief of delivery of possession by the process of Court and also sought restraining of respondent no. 4 permanently from going over the disputed land. Learned counsel further submitted that though the learned 1st Appellate Court has taken into consideration the application dated 26.08.2009 but had failed to consider that in the said

application the petitioners had mentioned about construction work of respondent no. 4 being stopped with the help of police and the respondent no. 4 failed in his attempts. Further the petitioners nowhere stated in their amendment application that construction made on earlier occasion by respondent no. 4 was their construction. The same not only amounts to misconstruing the facts but also amounts to an error of record. The learned 1st Appellate Court has further failed to take into consideration that as the petition under Order 6 Rule 17 of the Code was filed due to subsequent development and if the amendment was not allowed, it would result in multiplicity of litigation. The learned 1st Appellate Court also lost sight of the fact that as appeal is continuation of trial, a petition under Order 6 Rule 17 of the Code can be entertained even in appellate stage. Learned counsel further submitted that the learned 1st Appellate court failed to consider the settled principles of law that decree follows the possession and when the right, title and interest of the petitioners have been decided in their favour and the petitioners had been dispossessed by subsequent act of the respondent no. 4, then delivery of possession is to be made in favour of the petitioner. If the amendment petition is not allowed, the petitioner could not get the relief of recovery of

possession. But the learned 1st Appellate Court wrongly rejected the amendment petition on a false assumption that amendment sought for will change the nature and scope of the suit because prayer for delivery of possession is not going to affect the merits of the case and delivery of possession would come into play only when right, title and interest of the suit property is decided in favour of the plaintiff/petitioners. As such there is no question of changing the nature and scope of the suit by allowing the amendment sought for in the facts and circumstances of the case. Lastly, the learned counsel submitted that the learned trial court has not taken into consideration the several authorities of this High Court as well as the Hon'ble Supreme Court. The learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *Life Insurance Corporation Of India Vs Sanjeev Builders Private Limited* reported in *2022 SCC OnLine SC 1128*, specially para 70 of the case in support of his contention. Thus, the learned counsel submitted that the impugned order is not sustainable and the same needs to be set aside.

04. Learned counsel appearing on behalf of the respondent no. 4 submits that there is not infirmity in the impugned order and the present petition has been filed on

misconceived grounds. The petitioners were never in possession of the suit property and have made wrong submission in this regard. Their contention is falsified by their own petition dated 26.08.2009 wherein they have stated that respondent no. 4 had been making construction over the purchased land of the plaintiffs bearing khata no. 109, khesra no. 7986, area four and half decimal but even at that time, the petitioners did not seek any amendment. As the respondent no. 4 was in possession from very beginning, he made the construction. Further in his written statement, the respondent no. 4 stated that suit property was joint dwelling house and there was no separation of the share amongst the co-sharers. It is only for creating evidence that the petitioners filed the application dated 26.08.2009 but the petitioners did not seek any injunction against the respondents but only made prayer to keep the said application on record. However in their amendment petition dated 10.11.2014 the petitioners have stated that the respondent no. 4 has entered into the house of the petitioners but when the petitioners were never in possession, no question arises of their dispossession and in the facts and circumstances, the impugned order needs no interference of this Court.

05. I have given my thoughtful consideration to the

rival submission of the parties and perused the record.

06. Order 6 Rule 17 of the Code provides for amendment of pleading at any stage but prior to commencement of trial and if the amendment could not be moved prior to commencement of trial, then the parties seeking amendment has to show that he could not have moved the amendment at any earlier point of time.

07. In the present case, the petitioner who were plaintiffs before the learned trial court sought the relief of declaration over the suit property of Schedule "क" and further restraining orders against respondent no. 4 for going over the suit property. Interestingly, no confirmation of possession has been sought by the petitioners. Further when the defendant 3rd set/respondent no. 4 filed his written statement, he categorically took the position that he was in possession of the suit land and the petitioners have no possession over any part of the suit property and the *khatiyani* was prepared in the joint name of the ancestors of the respondent no. 4. It was incumbent upon the petitioners to clarify the position at that very time but the petitioners did not take any steps in this regard. When no confirmation of possession or recovery of possession was sought at the time of seeking declaration in title suit, even if a

decree of declaration of title has been passed in favour of the petitioners, the same would remain an empty decree. Clouds hovered over the possession of the petitioners from the very beginning as filing of application dated 26.08.2009 also shows that the respondent no. 4 have made some construction over the suit property and instead of seeking any relief against respondent no. 4 on this account, the petitioners sat tight over the matter. Even in their plaint, the petitioners have not stated about there being any house situated over the suit land and have stated about respondent no. 4 closing the door in the North side which was used by the petitioners to go to their land. This also shows the case of the petitioners regarding their possession even at the time of filing of the suit was not free from doubts. If the petitioners failed to seek amendment in their plaint during the pendency of the title suit, they could not be allowed to seek amendment in their plaint at the belated appellate stage. Moreover, when there was no prayer for confirmation of possession, plea of dispossession during pendency of appeal and seeking relief of recovery of possession is simply not permissible.

08. In the facts and circumstances of the case, reliance placed by the learned counsel for the petitioners on the case of

Life Insurance Corporation(supra) is not of any help since the facts are quite different.

09. In the light of the discussion made hereinbefore, I find no error of jurisdiction on part of the learned 1st Appellate Court in passing the impugned order. Though the order lacks reasons in support of the finding, still the impugned order dated 29.08.2019 is a proper order and hence it is affirmed.

10. Accordingly the present civil miscellaneous petition stands dismissed.

11. Interlocutory application, if any, stands disposed of.

12. However, it is made clear that this Court has not expressed any opinion on the merits of the case and observations made hereinbefore are only for the purpose of the disposal of the present petition and will not cause prejudice in the mind of the learned trial court.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
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