

(2000) 10 PAT CK 0010
In the Patna High Court
Case No : C.R. No. 1096 of 2000

Harihar Prasad

APPELLANT

Vs

Biresh Manjhi

RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2001) 3 PLJR 233

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Judgement

P.K. Deb, J.—Heard learned Counsel for the Petitioner. Although notices have been issued to the sole opposite party but he did not appear.

2. This revision petition has been preferred against the order dated 27.5.2000 passed, by Sub-Judge-IX, Gopalganj, in Eviction Suit No. 10 of 1995 whereby the prayer made by the Plaintiff-Petitioner for amendment of the plaint under Order 6 Rule 17 of the CPC has been rejected.

3. Originally the suit was filed as a Bimpliciter eviction suit. It was the case of the Plaintiff-Petitioner that the Defendant was a tenant in the suit premises under his vendor on purchase and on attornment made the Defendant became tenant of the Petitioner. As such, he claimed for eviction of the Defendant on the ground of personal necessity. In the written statement filed the Defendant came up with | he plea that he had purchased the suit property long back in the year 1931 and to that effect the sale deed was also produced. When the title of the Plaintiff was seriously being challenged and when Evidence was going on then the Petitioner-Plaintiff came up for amendment of the plaint. By such amendment the Plaintiff wants to change the eviction suit into a regular title suit including the reliefs of declaration of his own title and a negative declaration regarding the sale deed of the Defendant to be void ab initio. Such prayer has been rejected by the learned court below on the ground that such amendment if allowed would completely change the nature of the suit and when the Plaintiff's title was challenged long

back by filing written statement and the Plaintiff did not take steps earlier then the present amendment cannot be allowed. In a suit for eviction if the title is challenged then to avoid further litigation the Plaintiff can transform it into a regular title suit for the purpose of declaration of title and for that he is to pay ad valorem court fee.

4. It is true that there is some negligence and laches on the part of the Plaintiff as he did not come up soon after filing of the written statement by the Defendant for amendment but the delay alone cannot be the ground for rejecting the prayer of amendment. In my view, it is a fit case in which prayer ought to have been allowed by the learned court below. For the delay and harassment caused to the Defendant a cost may be awarded for the purpose of compensation to the Defendant-opposite party which I do accordingly. The revision petition is hereby allowed. The impugned order is set aside and the matter is sent back to the learned court below to allow the amendment of the Plaintiff, as prayed for, by giving scope to pay ad valorem court fee and also court fee for further declaration regarding the sale deed of the Defendant on pre-condition of deposit of Rs. 250/- towards cost which should be deposited within four weeks next from this date before the learned court below. Such deposit on pre-condition shall be disbursed in favour of the Defendant-opposite party.

5. This revision petition is disposed of accordingly.