

**Most Sumitra Devi and ors. Vs. R.M. Engineering Works and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/121431](http://sooperkanoon.com/121431)

**Court :** Patna

**Decided On :** Feb-03-1998

**Judge :** M.Y. Eqbal, J.

**Appeal No. :** Civil Revision No. 66 of 1967

**Appellant :** Most Sumitra Devi and ors.

**Respondent :** R.M. Engineering Works and ors.

**Disposition :** Application Allowed

**Prior history :** M.Y. Eqbal, J. 1. This Civil Revision application at the instance of the plaintiffs-petitioners is directed against the order dated 17.12.1996 passed by the Special Execution Munsif, Muzaffarpur, in Eviction Suit No. 4 of 1992 refusing the prayer for amendment of the plaint. 2. The plaintiffs-petitioners filed Eviction Suit No. 4 of 1992 in the Court of Munsif (East) Muzaffarpur for a decree for eviction on the ground of default. Originally the suit was filed by one Ramdeo Choudhury, who died

**Judgement :**

**M.Y. Eqbal, J.**

1. This Civil Revision application at the instance of the plaintiffs-petitioners is directed against the order dated 17.12.1996 passed by the Special Execution

Munsif, Muzaffarpur, in Eviction Suit No. 4 of 1992 refusing the prayer for amendment of the plaint.

2. The plaintiffs-petitioners filed Eviction Suit No. 4 of 1992 in the Court of Munsif (East) Muzaffarpur for a decree for eviction on the ground of default. Originally the suit was filed by one Ramdeo Choudhury, who died during the pendency of the suit and his heirs have been substituted. The plaintiffs' case, in brief, is that the suit premises detailed in Schedule-I of the plaint appertaining to Revisional Survey Plot No. 1764, Khata No. 667, was the exclusive property of the plaintiffs which was let out to the defendants on monthly rental of Rs. 250/-. The defendants executed a Kirayanama dated 1.1.1974, whereby relationship of landlord and tenant was created. The plaintiffs' further case is that Schedule-I property was allotted to the original plaintiff by virtue of oral partition by metes and bounds, as evidenced by Memorandum of partition dated 15.2.1976, duly signed by the parties and since then the original plaintiff had been in exclusive possession of the suit premises. It is alleged that since January, 1991, the defendants failed to pay the rent and became defaulter and made themselves liable for eviction.

3. The defendants appeared and filed their written statement contending therein, inter alia, that there was no relationship of landlord and tenant between the parties; inasmuch as the suit premises jointly owned and possessed by the original plaintiff-Ramdeo Choudhury and his brother-Mahadeo Choudhury, who is not a party in the suit. They denied all the allegations made in the plaint and made out a case that they were inducted as tenants by Mahadeo Choudhury who realised rent from them till his death and thereafter his sons (Yogendra Choudhury and Tuntun Choudhury) realised rent from them. So many other averments have been made in the written statement, which are not necessary to be stated herein for the purpose of this Revision application.

4. The suit was ultimately taken up for hearing and parties led their evidence. The plaintiffs' case is that the suit remained pending for quite some time at the argument stage and ultimately the plaintiffs were advised to introduce the subsequent event, i.e. breach of terms of tenancy for the reason that the defendants denied the title of the plaintiffs. The plaintiffs, therefore, filed an

application under Order VI Rule 17 of the Civil Procedure Code for amending the plaint by introducing the detailed facts about acquisition of the suit premises by the plaintiffs and also adding one more ground of breach of terms of tenancy for their eviction. The defendants-Opposite Parties opposed the prayer for amendment by filing rejoinder stating, inter alia, that the said amendment will change the nature of the suit and it will cause serious injury to the defendants. The Court below after hearing the parties rejected the application and refused to allow the prayer for amendment of the plaint.

5. I have heard Mr. S.S. Dwivedi, learned Counsel appearing on behalf of the petitioners, and Mr. Chittaranjan Sinha, learned Counsel appearing on behalf of the Opposite Parties.

6. Mr. Dwivedi on one hand argued that the Court below failed to exercise its jurisdiction by rejecting the application for amendment of the plaint, while on the other hand, Mr. Sinha supported the order and submitted that the Court below rightly rejected the application for amendment of the plaint at the stage when the suit was fixed for hearing. Learned Counsel in support of his contention relied upon the decisions in the cases of: (i) Sadhu Sharan Singh v. Deonath Saran Rai alias Bacha Babu AIR 1943 Patna 206 and; (ii) Dyavia and Anr. v. Shivamma and Anr. AIR 1959 Mysore 188.

7. I have gone through the entire facts of the case and also perused the impugned order passed by the Court below. As noticed above, the suit was filed on the ground of default and it was the case of the plaintiffs that the suit premises was acquired by virtue of partition in between the two brothers, namely, the plaintiff and Mahadeo Choudhury, The said fact was denied by the defendants on the ground that there had not been any partition and still the defendants are tenants under Mahadeo Choudhury and his heirs. From perusal of the amendment petition, it appears that the plaintiffs wanted to give some more facts as to how the suit property came to the hands of the plaintiffs and in what manner the partition took place. The plaintiffs further wanted to introduce the additional ground of breach of terms of tenancy for seeking decree for euiction.

So far the first part of the amendment is concerned, I am of the view that it is nothing, but by way of clarification regarding acquisition of title by the plaintiffs over the suit property. I do not find any new fact, foreign to the plaint, sought to be added by the plaintiffs by way of amendment. It is well settled that such facts by way of clarification can be added by amendment of the pleadings. Secondly, the plaintiffs wanted to add one more ground of breach of terms of tenancy for the reason that the defendants are denying the title of the plaintiffs. This fact is also, in my opinion, not a new thing; rather it arises because of the defence taken by the defendants.

8. It is well settled that even if new facts are introduced, but if those facts do not change the character of the suit, the amendment should be allowed. The test is whether new assertion, new cause of action and foreign to the scope of the suit, changes the entire complexion, if it does, then the amendment cannot be allowed. Further, it is well settled on well recognised principles that in order to shorten the litigation, to preserve the rights of both the parties, and to sub-serve the ends of justice, Court can and should take into consideration subsequent event and adjudicate the rights of the parties and grant relief available to them. In that view of the matter, I am of the opinion that the Court below has not correctly appreciated the law in rejecting the amendment application. The decisions relied upon by the Opposite Parties are not applicable for the reason that the proposed amendment, if allowed, would not change the cause of action for the suit and will not amount to re-trial of the whole case on new footing at a late stage.

9. Having regard to the facts and circumstances of the case, the impugned order passed by the Court below cannot be sustained in law.

10. In the result, this application is allowed and the impugned order is set aside. Consequently, the amendment sought for by the plaintiffs is also allowed. However, it is needless to say that the defendants-Opposite Parties are entitled to file additional written statement.