

IN THE COURT OF MUNSIF , NARKATIAGANJ , WEST CHAMPARAN

T.S NO- 18/2017

CIS NO.-TS 663/2018

SRIMATI SONA DEVI PLAINTIFF

VS.

BANARSHI MAHTO & OTHERS.....DEFENDANTS.

DATE	ORDER	REMARKS
16.01.2024	Attendance filed on behalf of both parties. Case called out for hearing on the point of Amendment of plaint. The present petition is filed on behalf of plaintiff under order 6 Rule-17 for amendment of plaint on dated 03.02.2020 and rejoinder of said petition filed by defendant on dated 03.04.2023 Heard the Ld counsel of plaintiff and Defendants and Perused the application and Statement filed below it. The present suit filed by plaintiff over the suit land having khata no-395, khesara-3143 Rakwa-0-0-10 dhur. The relief which sought by the plaintiff are for declaration of Title and Possession over the suit land and for permanent injunction and other relief. According to Plaintiff during the pendency of suit on dated 16.01.2020 timing around 6:00AM the defendants used to assaulted the plaintiff and their family members and also dispossessed them from the suit land and defendants were constructed a hut over the suit land. For this incident plaintiff have lodged a criminal case in Balthar Police station having case no-05/2020 under section 143/323/341/324/325/384/504/506/307 IPC against the defendants. So after dispossessed from the suit land plaintiff have filed this amendment petition and prayed for amendment in para-15 of plaint (A) that on dated 16/01/2020 defendant first series had assaulted plaintiff and their family members and dispossessed the plaintiff from the suit land and also constructed a Hut over the suit land by the defendants. (B)other amendment sought by plaintiff is that in relief portion in place of declaration of possession there is addition for recovery of possession and declaration of possession would be deleted. The Ld. Defendant counsel no-1 Series has filed rejoinder on dated 03/04/2023 and stated that amendment petition dated 03-02-2020 filed by plaintiff is not maintainable and petition has not been	

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Continue 16.01.2024	supported with affidavit and also stated that plaintiff has brought a new story of dispossession and the fact is that she was never in possession and also stated that plaintiff were set a fire over the hut of defendant on dated 15/06/2020 for which defendants were filed a criminal case against plaintiff in Balthar PS case no-53/2020 under section 436 of IPC. defendants also stated that defendants is in possession over the land in question since the date of purchased. In case of Life insurance corporation of India V. Sanjeev Builders PVT.Ltd and Anr. AIR 2022 SCC online SC 1128 has laid down a guidelines to be kept in mind for amendment of pleading under order 6 Rule-17 of CPC. The Guideline are as follows:- (a) All amendment are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. (b) If the amendment is required for effective and proper adjudication of controversy between the parties (c) In dealing with prayer for amendment of pleading , the court to avoid a hyper technical approach is ordinarily required to be liberal especially where opposite party can be compensated by costs. The court should also liberal if the amendment is sought before commencement of trail. (d) Delayed in applying for amendment alone is not a ground to disallow the prayer.where the aspect of delay is arguable ,the prayer for amendment could be allowed and the issue for limitation framed separately for decision. (e) Amendment should be disallowed , where the amendment change the nature of the suit or the cause of action , so as to set up an entirely new case, foreign to the case set-up in the plaint. It appears from the plaint that plaintiff were in possession at time of filing of suit and thereafter on dated 16.01.2020 defendants assaulted the plaintiff and their family and also dispossessed the plaintiff from the suit land and for this plaintiff has lodged a FIR in Balthar PS case no-05/2020 and thereafter defendants were also filed a case in Balthar PS case no-53/2020 on dated 15/06/2020 against the plaintiff for putting fire on hut of defendant.	
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Continue 16.01.2024	The real question in controversy between the parties here is that at the time of filling of suit who were in possession of suit land and whether it is plaintiff or defendants. From perusal of plaint and amendment application its appears that plaintiff were in possession over the suit land at the time filling of suit and thereafter plaintiff lodged a FIR at Balthar PS Case no-05/2020 on dated 16/01/2020 for dispossession by the defendants and also for assault to plaintiff by defendants . From perusal of the application for amendment in the light of averment in the plaint, and with reference to discussed case law it appears that the amendment sought it bona-fide and will not change the nature of claim and necessary for the purpose of determining the real question in controversy between the parties. Hence, the amendment petition dated 03-02-2020 is Allowed. The plaintiff is allowed to amend his plaint with in 14 days on payment of cost of Rs.1000/- to other side. List on 18-01-2024 for incorporating the allowed amendments and if incorporated before due date, for further proceeding. MUNSIF NARKATIAGANJ	
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