

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1461 of 2012

=====

Krishna Bhagat

.... Petitioner/s

Versus

Bhikhainia Devi & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 8 29-10-2015 **1.** Heard the learned counsel, Mr. Shashi Shekhar Dwivedi on behalf of the petitioner and learned counsel, Mr. Binod Kumar Singh on behalf of respondent No.1(b). In spite of notice in admission matter to other respondents and in spite of the fact that the names of the learned Advocates are printed in the daily cause list on behalf of the other respondents, nobody appeared.
- 2.** This application under Article 227 of the Constitution of India has been filed by the plaintiff petitioner against the order dated 10.12.2011 passed by learned Sub Judge Vth, Motihari in partition suit No.300 of 2000 whereby the Court below rejected the amendment application filed by the plaintiff petitioner.
- 3.** It appears that the plaintiff petitioner filed the aforesaid partition suit claiming partition in the suit property. The defendants appeared and filed contesting written statement. In the



written statement, they also took plea that there was compromise decree in earlier title suit No.85 of 1942. Thereafter, the petitioner filed amendment application which is Annexure '3' to this writ application. By way of amendment, the plaintiff pleaded that the plaintiff had no knowledge about the compromise decree passed in title suit No.85 of 1942 and further alleged that that suit was a collusive suit between the parties. Initially, this amendment application was allowed by the learned trial Court by order dated 12.01.2010. Against the said order, the defendant respondent filed C.W.J.C. No.3242 of 2011. This Court without giving any opportunity of hearing to the plaintiff by terms of order dated 10.05.2011 set aside the order holding that while allowing the amendment, the Court below has not considered Section 90 of the Evidence Act. The High Court remanded the matter and directed to pass a fresh order. Now, the Court below by this impugned order has rejected the amendment application on the ground that the trial Court had in fact not considered Section 90 of the Evidence Act and also that the plaintiff had not filed the amendment application just after filing the written statement or after three years of filing of the written statement.

4. The learned senior counsel, Mr. Dwivedi, for the petitioner submitted that the Court below has wrongly rejected the

amendment application without considering that the Court has the jurisdiction to allow the amendment at any stage of the suit.

5. As stated above, nobody appeared on behalf of the other side except respondent No.1(b).

6. It appears that the suit is of the year 2000. From the impugned order, it appears that evidence has not yet started. The Hon'ble Supreme Court in the case of **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (dead) By LRs (2008) 8 SCC 511** at paragraph 16 has held that '**principles governing the questions of granting or disallowing amendments under Order 6 Rule 17 CPC are well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. All amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties.**

7. The Hon'ble Supreme Court in the case of **Raj Kumar Gurawara Vs. S.K. Sarwagi (2008) 14 SCC 364** has held that '**a pre-trial amendment can be allowed liberally as the opposite party would not be prejudiced because he will have an**

opportunity of meeting the amendment sought to be made.’ In the present case, it is not evident from the impugned order that any prejudice will be caused to the defendant respondent as this is not the reasoning of the trial Court that plaintiff’s evidence has been closed. So far the reason assigned by the Court below is concerned, are not teneable. Section 90 of the Evidence Act has got no role to play while considering the application under Order 6 Rule 17 CPC.

8. In view of the above settled principle of law, this writ application is allowed and the impugned order is set aside. The application for amendment filed by the plaintiff petitioner is hereby allowed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U			
---	--	--	--