

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6186 of 2012

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Munni Devi @ Kaushalya Devi

.... Petitioner/s

Versus

Shyam Narayan Sharma & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

9 05-11-2015 Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. This application under Article 227 of the Constitution of India has been filed by plaintiff-petitioner against the order dated 20.07.2009 passed by the learned Munsif-II, Munger in Title Suit No.07 of 2004 whereby the court below has rejected the amendment application filed by the plaintiff under Order VI Rule 17 of the CPC.

3. It appears that the plaintiff-petitioner filed the aforesaid Title Suit No.07 of 2004 praying for declaration of title over the suit property. The defendants filed contesting written statement. Thereafter the amendment application was filed by the plaintiff alleging that on 30.12.2008 the defendants dispossessed her from the suit premises, therefore, the fact may be amended as subsequent event and accordingly in the relevant portion also



prayed for recovery of possession. The plaintiff also prayed in the application that there are some typing mistakes but the court below on the objection of the defendants-respondents by the impugned order rejected the amendment application on the ground that after hearing is started the application has been filed and the plaintiff has not explained as to whether she was knowing the facts prior to hearing of the suit start.

4. The learned counsel appearing on behalf of the petitioner submitted that while deciding the application under Order VI Rule 17 C.P.C. the court below should not have decided the fact alleged in the amendment application on merit. According to the plaintiff, she was dispossessed on 30.12.2008 and, therefore, as subsequent event the prayer was made for amendment in the plaint and accordingly relief was sought for but the court below decided the amendment application on consideration of the evidences and held that the amendment sought for appears to be false and rejected the same. In support of his contentions the learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal & Ors Vs K.K. Modi & Ors, (2006) 4 SCC 385.**

5. On the other hand, the learned counsel appearing on behalf of the respondents submitted that the learned court below

has rightly rejected the amendment application because the plaintiff herself was examined on 07.01.2009 wherein she never alleged that she was dispossessed on 30.12.2008. Now, therefore, if amendment is allowed then it will prejudice the defendants.

6. Perused the amendment application annexed as Annexure 1. At the time of hearing of this application copy of the plaint was also produced. The plaintiff filed the suit for declaration of title and confirmation of possession. In the amendment application at paragraph 1, the plaintiff stated that there is some typing errors and has mentioned the said typing mistakes. From perusal of the application, it is clear that those are only the formal amendments sought for and are not new facts which the plaintiff tried to introduce. So far the amendment for adding the subsequent event that on 30.12.2008 the defendants dispossessed the plaintiff is concerned, it may be mentioned here that the Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal & Ors Vs K.K. Modi & Ors** , (2006) 4 SCC 385 has held that the object of Order VI Rule 17 C.P.C. is that the court should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real questions in controversy between the parties provided it does not cause injustice or prejudice to the other side. The rule of



amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. The court always gives leave to amend pleadings of a party unless it is satisfied that the party applying was acting malafide. The amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. While considering whether an application for amendment should or should not be allowed the Court should not go into the correctness or falsity of the case in the amendment. In the present case, at our hand, the court below in the impugned order decided the correctness or falsity of the fact alleged in the plaint while considering the amendment application. So far the typing mistake is concerned, it may be mentioned here that from perusal of the application and the amendment sought for, it appears that those are not new facts at all.

7. It may be mentioned here that the plaintiff never prayed that she will adduce further evidence in support of the amendment prayed for. It is the objection of the defendants that in fact the defendants are in possession of the property and they dispossessed the plaintiff as alleged by the plaintiff. Now, therefore, in view of the amendment sought for by the plaintiff

there is no question of any prejudice to the other side arises because from the impugned order itself it appears that the evidence of the plaintiff was going on the date of rejection of the amendment application and the defendants had the opportunity to rebut the case of the plaintiff.

8. The Hon'ble Supreme Court in the case of **Rajkumar Gurward Vs. S.K. Sarwagi and Company Private Limited and Another, (2008) 14 SCC 364** has held that a pre-trial amendment could have been allowed liberally as the opposite party would not be prejudiced because he will have an opportunity of meeting the amendment sought to be made. However, in case of amendments after the commencement of trial particularly after completion of the evidence, the question of prejudice to the opposite party may arise and in such event it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso to Order VI Rule 17 C.P.C. In the present case, it may be mentioned here that the plaintiff originally claimed for declaration of title and confirmation of possession. Subsequently the amendment application was filed alleging that on 30.12.2008 the plaintiff has been dispossessed. Now, therefore, according to the plaintiff this is a subsequent event and it is settled principles of law that the courts are required to take notice of the fact of

subsequent event and the plaintiff has prayed for the relief according to this subsequent event. In such circumstances, in my opinion, when the plaintiff's evidence had not been concluded on the date of rejection of the amendment application, there was no question of prejudice to the defendants arises. Further the case of the defendants themselves that they were continuing in possession of the property and they never dispossessed the plaintiff. In such circumstances, whether the plaintiff was dispossessed or not it is a matter that may be considered finally at the time of hearing of the suit itself.

9. In the result, this writ application is allowed. The impugned order is set aside and the amendment application filed by the plaintiff-petitioner is hereby allowed.

(Mungeshwar Sahoo, J)

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