

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5513 of 2012

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Md.Badiuzzama & Ors

.... Petitioner/s

Versus

Iftekhar Nabi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md.Abu Haider

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

8 06-11-2015 **1.** Heard the learned counsel, Mr. Abu Haider, on behalf of the petitioner. In spite of notice on the defendants, they have not appeared before this Court.

2. This application has been filed by the plaintiff petitioner under Article 227 of the Constitution of India against the order dated 04.07.2009 passed by Sub Judge IV, Darbhanga in partition suit No.27 of 2003 whereby the Court below has rejected the amendment application filed by the plaintiff petitioner.

3. It appears that the plaintiff petitioner filed partition suit claiming share in the suit property. The defendants respondents filed written statement contesting the suit. Thereafter, some evidence were adduced by the plaintiff and then the amendment application was filed praying for substitution of the legal representatives of the plaintiff No.1 and also for adding some



properties which were left because of typing mistake. Rejoinder was filed. The Court below by the impugned order rejected the said application on the ground that after the insertion of Proviso to Order 6 Rule 17, amendment cannot be allowed, particularly when the application has been filed for such a delay and hearing stage is started. It may be mentioned here that by way of amendment, the plaintiff petitioner is not praying for introducing a new fact.

4. The Hon'ble Supreme Court in the case of *J. Samuel Vs. Gattu Mahesh 2012 (1) P.L.J.R. 412 S.C* at paragraph 12 has held that **'the primary aim of the Court is to try the case on its merits and ensure that the rule of justice prevails. For this, the need is for the true facts of the case to be placed before the Court so that the Court has access to all the relevant information in coming to its decision. Therefore, at times, it is required to permit parties to amend their complaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties.'**

5. In the present case from the impugned order, it appears

that even the case of the plaintiffs have not yet been concluded.

6. In view of the above fact that still the defendants have not started their evidence, there is no question of prejudice to them arises. Further the plaintiff is not praying for amendment in the plaint introducing a new fact. According to the plaintiff, some plots were left because of ignorance of the plaintiff which are required to be mentioned in the schedule of the plaint. In such circumstances, in the present case, the Proviso to Order 6 Rule 17 is not applicable and, therefore, the Court below has not exercised a jurisdiction vested in it by law and thereby has occasioned a failure of justice.

7. In the result, this writ application is allowed. The impugned order is set aside. The plaintiff's application for amendment is also allowed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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