

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5441 of 2011

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1. Chandeshwar Thakur, S/o- Late Daroga Thakur, R/o- village Harri Dularpur, P.S.-Sursand, District-Sitamarhi.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Collector Sitamarhi.
2. Smt.Shanti Devi, W/O Sri Bhuneshwar Thakur, r/o- village Harri Dularpur, P.S.-Sursand, Distt.Sitamarhi.
3. Sudhir Thakur, S/O- Sri Chandeshwar Thakur, R/O- village Harri Dularpur, P.S.-Sursand, Distt.Sitamarhi.
4. Sujeet Thakur, S/O- Sri Chandeshwar Thakur, R/O- village Harri Dularpur, P.S.-Sursand, Distt.-Sitamarhi
5. Smt.Bacchi Devi, W/O Shri Nageshwar Misra, R/O- village Manra, P.S.-Jaleswar, Distt.Mahottari At Present Residing At Mokameh-Janakpur Zero Mile, Post And P.S.-Janakpur, Distt.Mahottari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Sr. Advocate.
Mr. Binod Kumar
For the Respondent/s : Mr. V.R.P. Singh
Mr. Manoj Kumar Jha GP26

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 15-09-2015

Defendant no. 1 of Partition Suit No. 80 of 2009 has filed the present writ application aggrieved by the order dated 9.2.2011 (Annexure-4) passed by the Sub-Judge-I, Sitamarhi. The suit was filed for effecting partition in the suit property and to carve out ½ share of the plaintiff by appointing a Survey Knowing Pleader Commissioner. A further prayer was made to declare the R.S. entry of the suit land as wrong and not binding on the plaintiff. Prayer for temporary injunction was also prayed. On service of summons, the defendant-petitioner appeared and filed written statement. The Trial

Court framed issues. The suit was slated for evidence. On 20.8.2010, an application (Annexure-2) was filed by the plaintiff for amendment in the plaint. The defendant filed rejoinder (Annexure-3) and objected to the proposed amendment. The Trial Court by the impugned order allowed the amendment.

The plaintiff's case, in brief, is that Ram Ballam Rai had a son namely Ganga Prasad Rai and two daughters namely Arza Devi and Binda Devi. Ganga Prasad Rai predeceased his father leaving behind his wife Nainwati Devi and two daughters namely Saraswati Devi and Shanti Devi. Saraswati Devi was married to Chandeshwar Thakur (defendant-petitioner) and the plaintiff Shanti Devi was married to Bhuneshwar Thakur. Further case of the plaintiff is that her grand father Ram Ballam Rai had effected partition during his life time and thereafter gave half share to his wife Ram Jhari Devi and half to his daughter-in-law Most. Nainwati Devi and two granddaughters namely Saraswati Devi and Shanti Devi. The mother of the plaintiff came in possession of half of the properties. Due to mistake of the Survey Authorities, the land was jointly recorded in the name of Ram Jhari Devi and Most Nainawati Devi. The defendant no. 1 having brought the Survey Authorities in collusion got the property recorded in the name of his wife (Saraswati Devi) although the plaintiff and her sister had half shares in the partition effected by the grandfather. Ram Jhari Devi was allowed to live in house till her life time and after her death,

the property passed on to Nainwati Devi and after Nainwati Devi, both the daughters got equal shares. The defendant no. 1 became hostile when the plaintiff demanded partition and hence the suit.

The case of the defendant is that Ram Ballam Rai had executed two separate registered Wills one in favour of his wife Ram Jhari Devi and another in favour of his daughter-in-law Nainwati Devi. In the Will standing in the name of Nainwati Devi, it was specifically stipulated that Saraswati Devi would remain in possession of Survey Plot no. 745 (10 decimals) which is the residential house and sahan and the plaintiff Shanti Devi was not given any property by virtue of the two Wills. She was left joint in respect of some property with Ram Jhari Devi and Nainwati Devi. Accordingly, the name of Saraswati Devi was entered in the revisional survey khatian with regard to the said land and house which was also confirmed during the consolidation proceeding(s).

The petition for amendment in the plaint is enclosed as Annexure-1. Apart from clarifying certain facts with regard to the date of death of Ganga Prasad Rai which is not very much in dispute, the plaintiff also prayed amendment in the relief portion of the plaint and questioned the legality of the order passed by the Consolidation Authority.

Heard Mr. Yogendra Mishra, Senior counsel for the petitioner and Mr. V.R.P. Singh for the plaintiff-respondent.



It has been submitted by the petitioner that the Trial Court without due application of mind allowed the amendment in most arbitrary manner and, therefore, the order impugned is bad in law. It also failed to consider the objection raised by the defendant-petitioner in some of the paragraphs of the rejoinder. The challenge to the Chakbandi Khatiyani would be barred under Section 37 of the Consolidation Act. The Civil Court shall have no jurisdiction to decide the legality or otherwise of the Consolidation proceeding. Such amendment will change the nature of the suit.

In contra, the Counsel for the respondent supported the impugned order. He submitted that the amendment sought in the plaint after filing of the written statement was formal in nature. Who died when was the clarification made in the amendment petition. The case based on Will shall not materially change the case of the plaintiff since indisputably the Wills said to have been executed by Ram Ballam Rai were never probated and given effect to. By amendment in paragraph 3 of the plaint, the plaintiff has clarified these facts and also asserted that ancestral homestead land of C.S.P. no. 745 and 634 was not given to Saraswati Devi who had no exclusive title and possession over the same. The entry made in the Revisional Survey Khatiyani was already under challenge. By amendment the plaintiff wanted to add the words Chakbandi Khatiyani also in the relief portion. Some of the amendments prayed for by the plaintiff were not allowed by the



Court. The amendment in paragraph 2 of the plaint vide amendment petition (Annexure-2) was only with a view to rectify the apparent mistake(s) in the names in paragraphs 2 and 5 of the plaint of which no legal objection can be raised. If the entire plaint is read then amendment in paragraph 3 of the amendment petition would appear to be merely explanatory of what has been stated in paragraph 12 of the written statement regarding execution of the two Wills in the year 1998 by Ram Ballam Rai (deceased) in favour of Nainwati and Ram Jhari Devi and no new case or new facts inconsistent with the plaint has been introduced by the proposed amendment. It would, therefore, not cause any injustice or prejudice to the defendant. The plaintiff while praying for partition had sought a declaration that the R.S. Khatiyan entry with respect to the subject land was wrong and not binding on the plaintiff. On filing written statement, it was revealed that orders were passed by the Consolidation Authorities also in respect of the subject land in which the plaintiff was not a party at least with respect to 0.01 acres of land appertaining to R.S.P. No. 2294/3672. In such circumstance, the inclusion of Chakbandi Khatiyan to challenge the same in the relief part/portion of the plaint does not change the nature of the suit. It is now settled beyond cavil as held by the Full Bench of this Court in *Seikh Haidar Zan vs. Md. Yusuf Ansari (F.B.) 2000 (2) PLJR 338* that Section 37 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act is

not a bar to the institution of a suit based on title challenging the correctness of the entries in the register of lands under Consolidation Act in Civil Courts.

I have heard both sides.

Before considering the submission of the parties, the scope and ambit of the supervisory jurisdiction conferred under Article 227 of the Constitution of India be examined. The Court is not supposed to ignore the limitation of its jurisdiction. In ***Surya Dev Rai Vs. Ram Chander Rai (2003) 6 SCC 675***, the Apex Court in paragraphs 4, 6 and 7 held as under:

“4. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does not have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

6. A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

7. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any



suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.”

Broad principles governing such amendment in the plaint have been emphasized times without number in several judgments of the Apex Court. The amendment in the plaint should generally be allowed by the Court if it guards against multiplicity of litigation and thereby enhancing the cause of justice. Such amendment, which does not change the nature of the suit, should be allowed. If the amendment sought for does not change nature of the suit or a relief sought, which is barred by law of limitation or otherwise, the amendment should be allowed. The main plank of challenge to the order impugned is that the plaintiff, by way of amendment, seeks to challenge the chakbandi khatian also which achieved finality. There is statutory bar under the Consolidation Act to challenge the same. It will change the nature of the suit from partition suit to title suit.

Such plea at the first blush appears to be attractive but on deeper scrutiny is found hollow. The contention of the petitioner



needs to be examined in the background of the facts of the case. It is not to be forgotten that the plaintiff had challenged the revisional survey entry in respect of the suit land. On filing of written statement, it was revealed that the defendant no. 1 had also got consolidation records prepared in his/her name. In the relief portion, the plaintiff therefore prayed for addition of words “Consolidation Khatiyan” after the R.S. Khatiyan. Requisite pleadings in this regard were to be added in the plaint. It appears from the amendment petition that without notice to the plaintiff and thereby given an opportunity to contest the same, the order was passed/obtained. The facts sought to be pleaded in the plaint by way of amendment do not appear architecturally different or distinct. They are not inconsistent with the soul of the pleadings already made in the plaint. In *Seikh Haidar Zan (Supra)*, the Full Bench of this Court traced the legislative intent of the Consolidation Act and the bar provided under Section 37 thereof and held that right to property is not a creation of Consolidation Act. This Act merely provides a machinery for consolidation of the lands and determination of the rights for limited purpose. The suit, based on title challenging the correctness of the entry in the register of lands under the Consolidation Act, is not barred in the Civil Court. In the case at hand, the position is all the more worse. The plaintiff, by way of amendment, seeks to challenge the consolidation entries/khatiyan on the ground that he was not made party to those proceedings. The



petitioner could have legitimately avoided those entries but for effective and conclusive adjudication of the controversy sought amendment in the relief portion also to challenge those entries besides the R.S. entry of the suit land. This would definitely save the plaintiff from filing a separate suit for the said relief. One of the salient purposes of the provisions under the Code of Civil Procedure is achieved. Even otherwise, it does not cause any serious prejudice to the defendant who shall have an opportunity to file additional written statement to the amended pleadings of the plaint and contest the suit on merit.

Having considered the matter in the aforesaid manner, this Court does not find any perversity in the order calling for interference by invocation of writ jurisdiction. The writ application is dismissed.

There shall be no order as to costs.

(Kishore Kumar Mandal, J)

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