

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19850 of 2010

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1. Mathura High School through the then Principal Ram Nandan Chaudhary Mathura High School, P.S.- Sitamarhi, Distt.- Sitamarhi
2. Narendra Bihari Singh, Principal Mathura High School, P.S.- Sitamarhi, Distt.- Sitamarhi

.... Petitioners

Versus

1. Umesh Kr. Arya S/O Raktu Roy Alive R/O Belsand, P.S.- Belsand, Distt.- Sitamarhi, at Present Residing At Sitamarhi, Ring Bandh, P.S.- Sitamarhi, Distt.- Sitamarhi
2. Smt. Gayatri Devi Araya W/o Umesh Kumar Arya R/O Belsand, P.S.- Belsand, Distt.- Sitamarhi, At Present Residing At Sitamarhi, Ringh Bandh, P.S.- Sitamarhi, Distt.- Sitamarhi

.... Plaintiffs/Respondents

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Appearance :

For the Petitioner/s : Mr. Alok Kr.Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

2 06-08-2015

Heard learned counsel for the petitioners.

The defendant of the suit is Government school. The school and its principal have filed the present application calling in question the order dated 14.9.2010 passed by the trial court in Title suit no. 07 of 2007 filed for declaring the easementary right of the plaintiff.

A petition under Order VI, Rule 17 of the Code of Civil Procedure (for short ‘ the CPC’) was filed by the plaintiff-respondent on 18.12.2009 seeking amendment in the plaint. The amendment sought was that on one side of the plot no. 29 exists



plot no. 30. Plot no. 30 belongs to the family of Dinesh Kumar Yadav and not of the school. Similarly, other amendments were also sought. The defendant-petitioner filed rejoinder thereto on 07.01.2010. After hearing both sides, the trial court allowed the same, as in the opinion of the Court, the amendment was not going to change the nature of the suit and such amendment was necessary for proper resolution of the controversy raised in the suit. The Court also took notice of the fact that although the case was posted for evidence but in the meantime diverse petitions were filed by the parties and the Court was amidst consideration of those petitions. In such circumstances, the application was allowed. Aggrieved thereby the present writ petition has been filed.

Contention of the petitioners is that after the amendment in the Code no such application seeking amendment should have been allowed particularly when the trial has reached the stage where the evidence was to be adduced. The counsel has relied on the proviso to Order VI Rule 17 of the CPC which reads as under:-

“[17. Amendment of pleadings. -The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be

necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]”

The trial Court in the impugned order has noticed that the case was fixed for hearing on different petitions and evidence of the plaintiff till date was not adduced. It also noticed the amendment is not going to affect or change the nature of the suit. After all the plaintiff has to stand on its own legs. No legal right vested in the defendant has been shown to be taken away by such amendment. Having held so the amendment was allowed on imposition of cost.

Even the amended provision of the Order VI, Rule 17 concedes the jurisdiction of the Court in allowing such amendment in the interest of justice and for resolution of the actual dispute arising in the case effectively between the parties. In my view, the aforesaid order passed by the Court cannot be found fault with that too in exercise of the jurisdiction conferred on this Court under Article 227 of the Constitution. The application is dismissed.

Before parting with the records, it is observed that the defendant shall be at liberty to file additional written statement, if prayed for.

(Kishore Kumar Mandal, J)

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