

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12783 of 2012

- =====
1. Md. Muntasar Khan @ Md. Muntasar Ahmad Khan, Son Of Late Md. Yunus Khan,
 2. Md. Aftab Ahmad Khan, Son Of Late Md. Yunus Khan,
Both residents of Mohallah- Rahamganj, P.S.- Benta (Laheriasarai), District- Darbhanga.

.... Plaintiffs- Petitioners

Versus

1. The State of Bihar through the Collector, Darbhanga.
--- Defendant 1st Set/ Respondent 1st Set.
2. The Additional Collector, Darbhanga.
3. The Sub-Divisional Officer, Sadar, Darbhanga.
4. The Circle Officer, Sadar, Darbhanga Anchal, At and P.O.- Darbhanga, District- Darbhanga.
5. The Regional Development Authority, Darbhanga.
6. The Executive Engineer, Regional Development Authority, Darbhanga.
7. The Land Acquisition Officer, Darbhanga.
... Defendants 2nd Set/ Respondents 2nd Set.
8. Md. Isteyaqur Khan, son of Late Md. Yunus Khan,
9. Md. Iftekhar Alam Khan, son of late Md. Yunus Khan,
Both residents of Mohalla- Rahamganj, P.S.- Benta (Laheriasarai), District- Darbhanga
10. Sabhiya Khatoon, wife of Md. Nazim Khan, daughter of late Md. Yunus Khan, resident of Village- Kaligaon Tole Kalyanpur, P.S.- Singhwara, District- Darbhanga
11. Sufiya Khatoon, wife of Md. Mumtaz Alam, daughter of late Md. Yunus Khan resident of Mohallah- Rahamganj, P.S.- Laheriasarai, District- Darbhanga.
12. Sagira Khatoon, wife of late Md. Yunus Khan, resident of Mohallah- Rahamganj, Hospital Road (D.M.C.H.), P.S.- Laheriasarai, District- Darbhanga.
.... Plaintiffs/ Appellants/Respondents 3rd Set.

=====

Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Advocate
For the Respondent/s : Mr. Sanjay Kumar, A.C. to G.A.5

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-02-2015

The petitioners herein, filed Title Suit No.27 of 2002 in the Court of learned Subordinate Judge, Darbhanga

against the respondents, claiming the relief of declaration of title and perpetual injunction in respect of the suit property.

The respondents contested the suit. The trial Court dismissed the same through judgment dated 08.09.2010. Aggrieved by that, the petitioners filed T.A. No.54 of 2010 before the Court of Additional District Judge-cum- Fast Track Court-IV, Darbhanga.

During the pendency of the appeal, the petitioners filed an application with a prayer to permit them to amend the plaint by supplementing the boundaries to the suit properties. The application was opposed by the respondents. The lower appellate Court dismissed the application, through the order dated 05.06.2010. Hence, this writ petition under Article 227 of the Constitution.

Heard Sri Mahesh Narayan Parbat, learned counsel for the petitioners and Sri Sanjay Kumar, learned A.C. to G.A.5 for the respondents.

The petitioners feel aggrieved by the refusal of permission by the lower appellate Court, to amend the Schedule of the suit. The proposed amendment is in the form of boundaries to various items of suit properties.

Whatever may have been the facility, available for the parties to amend the pleadings at any stage of the



proceedings earlier, it became restricted with the introduction of proviso to Rule 17 of Order VI of the Code of Civil Procedure. The proviso virtually prohibits the amendment of pleadings once the trial of the suit has commenced. Though there is some difference of opinion as to when the trial of the suit can be said to have been commenced, that question does not arise in this case. The reason is that the suit has already been disposed of.

Notwithstanding to the restriction contained in proviso to Rule 17 of Order VI of the Code of Civil Procedure, there may be cases where the amendment can be permitted despite the commencement of trial. Such rare cases are where the necessity to amend has arisen during the pendency of the suit; or inspite of the best effort, the concerned parties were not aware of a particular fact.

The petitioners do not plead that they were not aware of the boundaries of the properties when the suit was filed. That being the case, they cannot be permitted to provide boundaries of the properties.

Further, obviously recognizing the importance of the boundaries of an item of immovable property, in a suit, filed in relation thereto, the Parliament incorporated Rule 3 in Order VII of the Code of Civil Procedure. It is to the effect

that where the subject matter of suit is an item of immovable property, the plaintiff must provide; not only the particulars of survey number, but also the boundaries thereof. If the petitioner herein did not feel it proper or necessary to provide boundaries, either at the time of filing the suit, or during the pendency thereof, he cannot be permitted to supplement the same at the stage of appeal. It hardly needs any mention that the boundaries have their own importance in respect of an item of immovable property.

The learned appellate Court has taken the correct view of the matter and we are not inclined to interfere with the same.

Accordingly, the writ petition is dismissed.

Interlocutory applications, if any, shall also stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Vikash Jain, J)

AFR
Sunil/-

U			
---	--	--	--