

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8563 of 2012

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ABDUL ZABBAR @ ABDUL ZABAR, SON OF LATE KARIM BAKSH @
LATE KARIM BAKSH MIAN, RESIDENT OF VILLAGE-AIN KHAN, P.S.-
DULHIN BAZAAR, DISTRICT-PATNA.

.... PETITIONER/S

VERSUS

MD.ISHLAM @ ISHLAM MIYA, SON OF MD. RAHIM MIAN, RESIDENT OF
VILLAGE-BHARATPUR, P.S.-DULHIN BAZAAR, DISTRICT-PATNA.

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. BINOD PRASAD SINGH

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 08-12-2015

Plaintiff/petitioner has challenged the order dated
31.01.2011 as well as 11.08.2011 passed by the Munsif IVth, Saran at
Chapra in Eviction Suit No.1 of 2008 whereby and whereunder
prayer for amendment has been rejected.

2. It has been submitted on behalf of plaintiff/petitioner
that after appearance of defendant/respondent, they have filed WS
wherein they have denied the inter se relationship of landlord and
tenant contrary to it claimed title over the land under dispute and on
account thereof, to have efficacious adjudication, amendment has
been sought for which has been rejected by the learned lower court
on the ground that a suit for eviction cannot be controverted as a title
suit. In support of their contention has relied upon 2007(3) PLJR 778
(Balram Medical Hall Vs. Rajendra Prasad & Ors.), 2001(3) PLJR
233 (Harihar Prasad Vs. Biresh Manjhi).

3. The learned counsel for the defendant/respondent vehemently opposed and submitted that prayer of the plaintiff/petitioner is not at all appreciable whereupon the learned lower court rightly dismissed the suit. It has further been submitted that amendment in normal circumstance should not be allowed.

4. In *Sajjan Kumar v. Ram Kishan* reported in (2005) 13 SCC 89 it has been held:

“5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

5. In *B.K. Narayana Pillai v. Parameswaran Pillai* reported in (2000) 1 SCC 712 it has been observed under para-3.

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend



his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.”

In *Ram Niranjana Kajaria, Jugal Kishroo Kajaria Vs.*

Sheo Prakash Kajaria & Ors. reported in 2015(4) PLJR 290, it has been held:

“21. On amendments generally, in the decision reported in *Revajeetu Builders & Developers v. Narayanaswamy & Sons and Others*, after referring to *Gautam Sarup* (supra), the principles on amendment have been summarized at Paragraph-63, it has been held as follows:-

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

6. Accordingly, order impugned is set aside. Petition is allowed. However subject to cost of Rs.1000 (One thousand).

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 8th day of Dec., 2015
Prakash Narayan

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