

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6177 of 2011

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1. Ram Autar Mahto S/o Late Sone Lal Mahto R/o Village-Sukhet Tole-Koriyapatti,Ps-Jhanjhapur,Distt.Madhubani(Bihar)

2. Rajaram Mahto S/o Late Sone Lal Mahto R/o Village-Sukhet Tole-Koriyapatti,P.S.-Jhanjhapur,Distt.Madhubani(Bihar)

.... Petitioners

Versus

1. Smt.Durga Devi Wife Of Sri Chaudhary Mahto R/o Village-Dumra PS-Andhra Tharhi,Distt. Madhubani.

2. Smt.Parvati Devi Wife Of Sri Vaidyanath Mahto R/o Lofa PS-Madhepur, Distt.Madhubani.

3. Smt.Dana Devi Wife Sri Shiv Shankar Mahto R/o village Deep Raghonagar Tole-Harnanga,P S-Lakhnaur Distt.Madhubani.

4. Smt.Asha Devi Wife Of Sri Siyaram Mahto R/o village Bhakrauli PS-Madhepura, Distt.Madhubani.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shashi Nath Jha, Advocate.

For the Respondent/s : Mr. S.K.Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR

MANDAL

ORAL ORDER

6 26-08-2015 I have heard Mr. Shashi Nath Jha for the petitioners and Mr. S.K.Das for the opposite parties.

The applicants of probate case no. 24 of 1999 pending in the court of 1st Additional District Judge, Madhubani have filed the writ application under Article 227 of the Constitution of India challenging the pregnability of the order dated 22.2.2011 passed by the trial Court allowing the amendment petition (Annexure-3) filed by the objector/opposite parties to amend certain statements made in the rejoinder (Annexure-2) filed by them to oppose the probate petition filed by the petitioners. The Court in the order impugned has observed as

under :-

“Therefore, it appears that due to clerical mistake instead of denying paragraphs 1 and 2 of the probate application the opposite parties inadvertently denied paragraphs 1,2, and 3. It may also be noted here that the prayer of applicant for grant of Probate/letter of Administration has been challenged by the opposite party by their appearing in the case and filing rejoinder to the Probate application. The duty of the court is to impart substantial justice and therefore, in view of my above opinion the amendment petition under consideration deserves favour and accordingly the same is allowed at the cost of Rs. 400/-(Four hundred only). The opposite party is directed to accordingly amend their rejoinder by 7.3.2011.”

Brief facts relevant for disposal of the case may be noticed.

The petitioners are own brothers. On the strength of a Will dated 07.09.1987 executed by their aunt late Fulbatiya Devi in their favour, they filed a probate case in June, 2009 for grant of probate/letters of administration. The four daughters of late Fulbatiya Devi being the next kith and kin of the executor/testator were impleaded as opposite parties to the proceeding. The petition asserted that late Fulbatiya Devi had no son and she died on 12.12.1987 leaving behind her husband Anup Mahto and four daughters. The Will dated 07.09.1987 was her last Will. The four daughters (respondents herein) appeared and filed rejoinder (Annexure-2) on 02.01.2001. Since an objection was filed by the



opposite parties the probate case stood converted into a suit. However, the nomenclature of the case remained the same. On 20.8.2010 the opp. parties (respondents herein) filed a petition(Annexure-3) seeking amendment in the rejoinder. In para- 5 of the rejoinder instead of para 1 to 3, the opposite parties sought deletion of digit '3' to be substituted by digit '2'. Para 5 of the rejoinder dealt with para 1 to 3 of the probate case. In para 3 the applicants had stated that Fulbatiya Devi had no son and she executed a Will on 7.9.1987 in favour of the petitioner(s). Similarly, in para 6 the number of paragraphs was sought to be amended. A rejoinder thereto was filed by the applicant(s) on 4.9.2010. The trial Court, on consideration of the submissions of the parties, allowed the amendments against which the present writ petition has been filed.

Mr. Jha has contended that rejoinder filed in the probate case is neither plaint nor written statement and as such there cannot be any amendment of the rejoinder. The provisions of Order 6 Rule 17 CPC shall not apply in the case of a rejoinder. Alternatively, it is argued such amendment was sought after 12 years of the institution of the case and was, therefore, fit to be rejected. In the rejoinder the opposite parties had accepted about execution of the Will but by way of amendment in para 5 they have sought to deny the execution thereof. Admission made of a

fact cannot be withdrawn by amendment. This aspect of the matter has escaped the consideration of the Court.

Mr. Das has conversely submitted that objection in a probate proceeding is the written statement. Once objection is filed the probate case converts into a suit and the trial begins. The rejoinder is treated as written statement calling for a trial which is going on. The contention of the petitioners is, therefore, misplaced. Combating the other submission of the petitioners he contended that the probate case was filed in 1999 which was converted into a suit on filing the rejoinder in 2001 and as such the provisions of Order 6 Rule 17 amendment in 2002 shall have no application. The Courts have invariably allowed amendment in the pleadings if the same is found necessary for the ends of justice and necessary to resolve the real controversy between the parties.

The first contention of Mr. Jha that the rejoinder is not a pleading conceived under Order 6 Rule 17, in my view, appears to be completely misplaced. An objection filed in the probate proceeding calls for a full dressed trial under Section 295 of the Indian Succession Act which is advantageously extracted hereinbelow:-

“295. Procedure in contentious cases. –

In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908) in which the petitioner for probate or

letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.”

Indisputably, the trial court in that case holds the trial to ascertain the genuineness of the Will. This is only because of the objection/rejoinder which the respondents filed being the next kith and kin of the executor of the Will. Whatever be the nomenclature of the objection/rejoinder the fact of the matter remains the same. A rejoinder is filed to oppose the grant of the relief which, as noticed above, has to be disposed of in accordance with the procedure prescribed in the Code of Civil Procedure. This Court has no manner of doubt to hold that the rejoinder filed in the probate case leading to trial is for all practical purposes the written statement filed by the objectors and as such amendment in the rejoinder can be prayed and allowed by the Court to secure the ends of justice.

This takes the court to the next submission of the petitioners. It has been submitted that by virtue of amendment in para 5 of the rejoinder the admission made by the opposite parties are sought to be withdrawn. Para-5 of the rejoinder deals with paragraph nos. 1 to 3 of the petition. The opposite parties want deletion of digit 3 referable to para 3 of the probate petition which asserts as under:-

“That Shrimati Phulbatiya Devi had no son and she executed a will on 7.9.1987

in favour of the petitioner.”

In substance, by amendment they want to deny the execution of the Will. The trial Court found it a clerical mistake on appreciating the entire pleadings made in the rejoinder. This Court also perused the statements which the opposite parties of the probate case made in the rejoinder to find that the execution of the Will has been denied in diverse paragraphs of the rejoinder. In fact, case of the opposite parties (respondents herein) is that such Will was never executed by Smt. Fulbatiya Devi. Having regard to these facts manifesting from the record, the trial court by allowing the amendment has held them a mere clerical mistakes not changing the nature of the suit. For the sake of justice such amendment was deemed necessary and allowed on imposition of cost for delayed filing thereof. It is settled beyond cavil that in order to appreciate such contention the court is always required to take into account the entire pleadings of the parties and not merely one paragraph or one line thereof. Mr. Das has rightly relied on **2009(3) PLJR 865 [Brij Nandan Prasad Singh vs. Uchit Singh & Ors.](Paragraph no.7)** to submit that for the ends of justice the trial court has unfettered power to allow such amendment subject to certain limitation(s) which in the case at hand do not exist. The contention of the petitioners that a vital admission is sought to be withdrawn is also held unsustainable in law.

Only the applicant has been examined. He may be required for re-examination. The Court has imposed the cost to offset the inconvenience caused to the applicant/plaintiff. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India merits not to be invoked to correct any error committed by the Court until and unless the same is grave causing serious prejudice to the party. This Court does not find the trial court in allowing amendment in the rejoinder acted with material irregularity causing any grievous error.

The application is dismissed.

(Kishore Kumar Mandal, J)

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