

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 18148 of 2010

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1. Brahmanand Choudhary Son of Late Saryug Prasad Choudhary (Defendant Ist Party)

2. Rajeev Kumar Choudhary Son of Sri Brahmanand Choudhary.

3. Sanjiv Kumar Choudhary Son of Sri Brahmanand Choudhary.

4. Ranjan Kumar Choudhary Son of Sri Brahmanand Choudhary.

All residents of village- Rupaspur Khagaha, Police Station - Mirganj, District - Purnia.

.....(Defendat 2nd party)

..... **Petitioners**

Versus

1. Smt.Narayani Devi Wife of Shri Triveni Prasad Choudhary.

2. Shri Triveni Prasad Choudhary Son of Late Saraju Prasad Choudhary.

Both residents of village- Rupaspur Khagaha, Police Station- Mirganj, District- Purnia.

.....(Plaintiffs)

..... **Respondents**

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Appearance :

For the Petitioner/s : Mr. ARUN PRASAD AMBASTHA

For the Respondent/s : Mr. SHIVA SHANKAR SHARMA

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 22-05-2015

Heard learned counsel for petitioners and Sri Shiva Shankar Sharma, learned counsel, who has appeared on behalf of plaintiff/respondents.

The present writ petition under Article 227 of the Constitution of India has been filed with a prayer to set aside the order dated 15-11-2008 passed by the Sub-Judge Ist, Purnia (hereinafter referred to as "Sub Judge") in Title Suit No. 87 of 2005. By the said order, the

learned Sub Judge has allowed the petition filed on behalf of plaintiff/respondents for amending the plaint under Order 6 Rule 17 of the Code of Civil Procedure (in short "CPC").

Short fact of the case is that the plaintiff/respondents filed a suit, vide Title Suit No. 87 of 2005, for following reliefs:-

- (A) That let it be adjudicated and declared by the court that the plaintiffs have every manner of tile, right and interest in possession over the suit land described Schedule A of the plaint. And that the plaintiffs are the full owner of the suit properties fully described in Schedule "B" of the plaints. And the Defendants do not have any concern therewith. Accordingly the decree to these effect be passed.
- (B) That after the above adjudication the court may be pleased to pass a decree for the recovery of possession of the suit land and suit properties the fully described in Schedule "A" and Schedule "B" of the plaint in favour of the plaintiffs and against the Defendants.
- (C) The court may further be pleased to pass a decree for permanent injunction against the Defendants from interfering with the peaceful possession of the plaintiffs over the suit land and also from transferring or transforming the suit properties described in Schedule "B" of the plaint.
- (D) That any other relief or reliefs may be granted in favour of the plaintiffs and against the Defendants, to which the court deems fit and proper.
- (E) That the court may be pleased to pass a decree for the cost of the suit in favour of the plaintiffs and against the Defendants."

The suit property in question is described in Schedule "A" of the plaint, which is as follows:-

"Schedule "A"

Description of the suit land.

Mauza - Rupaspur Khagaha, Thana Dhamdaha, Thana No. 136, District Purnia.

<u>R.S.Khata No.</u>	<u>R.S.Plot No.</u>	<u>Area A-Dec.</u>
486	733	0.01 ½

(One and half decimal)

Boundaries

North:- Brahma Nand Chaudhary (Defendant No. 1)

South:- Triveni Pd. Chaudhary (Plaintiff No. 1)

East:- Brick soling road and Shatrughna Chaudhary

West :- Triveni Pd. Chaudhary."

In the suit, the defendants/petitioners appeared and filed written statement and in paragraph - 8 of the written statement, which was filed in the month of November, 2005 itself, a categorical stand was taken that the description of the land, as has been given in Schedule "A" read with paragraph - 1 of the plaint, is totally wrong and vague and inasmuch as on the eastern boundary, their lies the land of the defendant and due to mistake of Khatib, the eastern boundary of 1 ½ decimal land brick soling road and Shatrughna Chaudhary have been noted. During the trial after the conclusion of evidence, from the plaintiffs' side, argument was concluded and thereafter, argument on behalf of defendants had commenced

and during the argument of the defendants, the plaintiffs filed a petition for amendment, which has been allowed. In the amendment application, the plaintiff had prayed for following amendment:-

"Full description of proposed amendment.

"In Schedule "A" East and West boundary be deleted and in its place following be incorporated Remarks:- The suit land living contiguous south to the house of defendant having three rooms and a Verandah having its length east to west and breadth North to South". As fully described in the map of suit land reported by survey knowing Advocate Commissioner vide Ext.G/1."

The defendants/petitioners filed rejoinder to the amendment petition taking the plea that earlier to filing of the said amendment petition on 02-09-2008 also plaintiffs had filed the amendment petition for the same relief. It was claimed that trial had almost been concluded and it was a stage where after conclusion of argument from the plaintiff side, argument of defendant had also come to the fag end. During the trial, parties examined and got exhibited their documents. The survey knowing Advocate Commissioner had also visited the spot and submitted its report. However, the learned court below, in view of the provision contained in Order

7 Rule 3 of the CPC, had allowed the petition for amendment, which has been assailed in the present proceeding.

Learned counsel for petitioners, assailing the order impugned, has argued that amendment petition was required to be rejected, in view of proviso to Rule 17 of Order 6 of the CPC. It was submitted that no reason has been assigned as to why the plaintiffs/respondents had not raised this issue at earlier stage. Learned counsel for petitioners submits that in terms of amendment in Rule 17, which has been effected in the year 2002, the amendment petition was required to be rejected.

Learned counsel for respondents, opposing the prayer of the petitioners, submits that since the suit property incorporated in the plaint was vague, with a view to removing ambiguity, such amendment petition was filed. However, learned counsel for the plaintiff-respondents was not in a position to satisfy the Court as to whether the plaintiffs had explained before the court below plausible reason to show that as to why earlier the plaintiffs had not taken diligent step for

amending the same.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that in the trial before the court below, argument on behalf of the plaintiffs was concluded and argument on behalf of the defendants was in progress and during the said period, such amendment petition was filed. Had it been filed prior to amendment of Rule 17, the matter would have been different, but once it was made clear that no amendment shall be entertained after commencement of trial unless the Court comes to the conclusion that instead of due diligence the party could not have raised the matter before the commencement of trial, there was no reason for the learned court below to pass order in favour of the amendment. Before this Court, nothing has been brought to the notice that the plaintiffs/respondents had taken the stand regarding the reason for not filing such amendment petition before the commencement of trial. However, in the written statement itself, the defendants/petitioners had raised the objection

that property in dispute, as has been mentioned in Schedule "A", is vague. In that view of the matter, particularly in view of the proviso to Rule 17 of Order 6 of the CPC, the Court is of the opinion that the learned Sub Judge was not justified in allowing the amendment petition.

Accordingly, order dated 15-11-2008 passed by learned Sub-Judge-1, Purnia in Title Suit No. 87 of 2005 is, hereby, set aside and writ petition is allowed.

Before parting with the order, it is necessary to indicate that this Court has set aside the impugned order only on technicality not on merit and the learned court below may not be prejudiced with this order.

Earlier, in the present writ petition, on 09-02-2009, while directing for issuance of notice to opposite parties (respondents), a bench of this Court had directed for staying further proceeding of Title Suit No. 87 of 2005 pending before the court of Sub-Judge 1st, Purnia.

In view of disposal of the present writ petition, the order of staying proceeding in Title Suit No. 87 of 2005 stands vacated.

The learned court below may take appropriate step so that trial may come to its logical end without unnecessary delay. Since argument on behalf of defendants is continuing, the learned trial court may take appropriate step so that the case may be concluded preferably within a period of three months from the date of receipt/production of a copy of this order.

With above observation & direction, the petition stands allowed.

(Rakesh Kumar, J.)

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