

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15976 of 2015

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Ram Birendra Singh & Ors

.... Petitioner/s

Versus

Bishwanath Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 02-12-2015 1. Heard the learned counsel, Mr. Shivendra Kumar Sinha,
for the defendant petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner against the order dated 02.01.2015 passed by the learned Sub Jud IIIrd, Danapur in Title Suit No.61 of 2005 whereby the Court below has allowed the amendment application filed by the plaintiff respondent.

3. It appears that the plaintiff respondent filed partition suit. Evidences were closed and the case was fixed for argument and then the amendment application was filed by the plaintiff respondent praying for addition of some other properties in the schedule of the plaint. The plaintiff prayed for addition on the ground that by mistake the said properties were not included in the schedule of the plaint. Objection was raised. By the impugned



order, the Court below has allowed the application. The learned counsel for the petitioner submitted that from perusal of the plaint itself, it is clear that there had already been partition between both the parties and the parties are in possession of their respective shares. The petition filed by the plaintiff respondent is not maintainable because the same has been filed after the closure of the evidence and at the time of hearing of the suit. The Court below without considering these aspects of the matter has allowed the amendment application. According to the learned counsel, the plaintiff respondent are not unaware of the fact that which property are partible and which are not and, therefore, the impugned order passed by the Court below allowing the amendment application be set aside.

4. Perused the order passed by the Court below. It is admitted fact that the suit has been filed for partition and according to the defendants, there had already been partition between the parties. The evidences have been produced and then the matter had been fixed for hearing. From perusal of the amendment application filed by the petitioner respondent, it appears that the plaintiff filed the said amendment application on the ground that by mistake, the description of some of the properties are not added in the schedule of the plaint, therefore, he

prayed for addition. So far the submission of the learned counsel that the application filed at a very late stage is concerned, it may be mentioned that on ground of delay, the amendment cannot be rejected.

5. The settled principle of law is that **‘the primary aim of the Court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the Court so that the Court access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their pleadings. The Court’s discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties’** Reference may be made to the decision of the Hon’ble Supreme Court in the case of *J. Samuel Vs. Gattu Mahesh 2012 (1) P.L.J.R. 412 SC*. In the said decision, the Supreme Court also dealt with the Proviso to Order 6 Rule 17 CPC and held that **‘if the mistake is being corrected then the Proviso will not apply.’**

6. In view of the above facts and circumstances of the case

when the Court below exercised the jurisdiction and allowed the addition of some properties only in the schedule of the property, there is no question of any prejudice arises. The case of the defendant is that there had already been partition between the parties. I, therefore find that the impugned order is not liable to be interfered with in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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