

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25317 of 2013

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Banke Bihari Mishra

.... Petitioner/s

Versus

Chandrika Prasad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satya Nand Shukla

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 30-10-2015

Heard learned counsel Mr. Satya Nand Shukla for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner against a part of order dated 23.08.2013 passed by learned Additional Munsif-II, Gopalganj in Title Suit No.225 of 2002 whereby the court below has rejected the application for amendment of the plaint on the ground that the trial has already concluded and only argument is to be advanced by the parties.

3. It appears that the plaintiff-petitioner filed the aforesaid suit for declaration of his title and confirmation of possession and in the alternative had prayed for recovery of possession after evicting the defendant from the suit property. The defendant filed contesting written statement. After closure of evidence of both parties, amendment application was filed by the

plaintiff-petitioner, which is Annexure-2 to the writ application. In the amendment application the plaintiff prayed for amendment of certain paragraphs on the ground that those are typing mistakes and then prayed for adding a new paragraph 3(ka) in the plaint. The court below by the impugned order has allowed that part of the amendment whereby the correction was sought for and rejected the application whereby the plaintiff tried to introduce a new fact.

4. The learned counsel for the petitioner submitted that the court below has ample jurisdiction to allow amendment at any stage. The argument of the case is not yet been concluded and, therefore, it is necessary for the just decision of the controversy between the parties that the amendment should have been allowed by the court below.

5. Admittedly Title Suit No225 of 2002 was instituted on 31st July, 2002. The Civil Procedure Code Amendment Act 2002 (Act 22 of 2002) came into force on 1st July, 2002. By this amendment Act, proviso to Order VI Rule 17 of C.P.C. has been added, which provides that :

“No application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

6. From perusal of the impugned order, it appears that the court below considered the fact that after this portion of the amendment is allowed then certainly it will prejudice the defendant because the defendant will have to face a new case which is being pleaded for the first time. It further appears from the amendment application that the plaintiff nowhere stated about as to whether why this fact, which is being now introduced after 13 years, was not pleaded in the plaint on the date of institution because it is not the case of the plaintiff that this fact was not within his knowledge.

7. In view of the above position that in fact the parties have already adduced their evidences and case is pending for argument and that there is no explanation offered by the plaintiff as to why the fact, which is being now introduced by way of amendment, was not pleaded originally, in my opinion, the court below has rightly rejected the amendment application, therefore, it needs no interference in exercise of jurisdiction under Article 227 of the Constitution of India.

8. Accordingly, this writ application is dismissed.

Harish/-

(Mungeshwar Sahoo, J)

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