

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.98 of 2014

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1. Gita Singh @ Gita Prasad Singh Son Of Late Harihar Singh Resident Of Village Mafi, P.S. Warsaliganj, District - Nawadah

.... Petitioner/s

Versus

1. Sunita Devi Daughter Of Gita Singh, Wife Of Dewashary Singh Resident Of Village Mafi, P.S. Warsaliganj, District - Nawadah, At Present Resident Of Village - Karishowa, Wazeerganj, District - Gaya
2. Niranjana Kumar Son Of Late Sitaram Singh Resident Of Village Mafi, P.S. Warsaliganj, District - Nawadah
3. Sharwan Kumar Son Of Late Sitaram Singh Resident Of Village Mafi, P.S. Warsaliganj, District - Nawadah
4. Aruna Devi Wife Of Late Mahesh Kumar Resident Of Village Mafi, P.S. Warsaliganj, District - Nawadah
5. Surbhi Suman Son Of Late Mahesh Kumar Resident Of Village Mafi, P.S. Warsaliganj, District - Nawadah
6. Gaurav Kumar Son Of Late Mahesh Kumar Resident Of Village Mafi, P.S. Warsaliganj, District - Nawadah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Choudhary
For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 04-12-2015 Heard learned counsel for the petitioner.

This writ application under Article 227 of the Constitution of India has been filed by the defendant no.1-petitioner against the order dated 17.09.2013 passed by the learned Civil Judge, 1st Nawadah, in Partition Suit No. 135 of 2009 whereby the court below has allowed the amendment application filed by the plaintiff- respondent under Order 6 Rule 17 CPC.

The only grievance of the petitioner is that the



court below allowed the amendment application after closure of the evidence of the plaintiff and that now by the amendment, the plaintiff is trying to add the properties, which have already been sold by the petitioner at the time of marriage of plaintiff-respondent. The plaintiff-respondent is the daughter of the petitioner. In spite of above objection, the court below instead of deciding the application on merit, allowed the application wrongly. It appears that Partition Suit was filed by the daughter of the defendant no.1. The father, who is defendant no.1, filed written statement alleging that there had already been partition between the parties. Thereafter the plaintiff examined the witnesses and then the amendment application was filed, which was objected to by the defendant-petitioner on the ground that, in fact, some properties are sold and some properties are belonging to third party.

So far submission of learned counsel for the petitioner that the witnesses have already been examined is concerned, now it is admitted fact that the petitioner has not yet started to adduce his evidence. The Hon'ble Supreme Court in the case of *Rajkumar Gurawara –v- S.K. Sarwagi & Co.(P) Ltd.* reported in (2008)14 SCC 364 has held that-

“...a pre trial amendment can be allowed liberally as the opposite party would not be

prejudiced because he would have an opportunity of meeting the amendment sought to be made. However, in case of amendments after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise.”

In the present case, admittedly, the petitioner has not yet started his evidence, therefore, he will have sufficient opportunity to meet the amendment portion of the plaint.

So far submission of learned counsel for the petitioner that the court below should have decided the amendment application on merit because by the amendment property of third party and the properties which have been sold sought to be added in the schedule of the plaint. It may be mentioned that the Hon'ble Supreme Court in the case of Lakha Ram Sharma –v- Balar Marketing Private Limited, reported in (2008)17 SCC 671 has held as follows:

“ It is settled law that while considering whether the amendment is to be granted or not, the court does not go into the merits of the matter and decide whether or not the claim made therein is bona fide or not. That is a question which can only be decided at the trial of the suit. It is also settled law that merely because an amendment may take the suit out of the jurisdiction of that court is no ground for refusing that amendment.”

In the present case, according to the plaintiff there

was some mistake in the description of the suit property which is liable for partition has been left, therefore, the amendment was filed and the properties were being substituted.

In exercise of supervising jurisdiction, under Article 227 of the Constitution of India, I am not inclined to interfere with the impugned order.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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