

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.840 of 2011

Mani Lal Yadav S/O Late Behru Yadav Resident Of Village - Barhara , P.S. - Raj Nagar , District - Madhubani .

....Defendant-Petitioner/s

Versus

1. Baleshwar Yadav S/O Late Bunni Yadav Resident Of Village - Barhara , P.S. - Raj Nagar , District - Madhubani
2. Yugeshwar Yadav S/O Late Bunni Yadav Resident Of Village - Barhara , P.S. - Raj Nagar , District - Madhubani

....Plaintiffs-Respondents

Appearance :

For the Petitioner/s : Mr. ANANT KUMAR BHASKAR

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL  
ORAL JUDGMENT

Date: 21-08-2015

Heard learned counsel for the petitioner.

The defendant of T.S. No. 30 of 2002 has filed the present writ petition to question the legality of the order dated 19.11.2009 passed by the Munsif, Madhubani whereby the application seeking amendment in the plaint (Annexure-2) filed on 24.03.2009 was allowed on cost for delayed prayer giving liberty to the defendant to file additional written statement, if any thereto.

The suit was filed by the plaintiff for declaration of title and confirmation of possession. The plaintiff and the principal defendant belonged to the common ancestor namely Brihuspati Gope. The application was filed for making correction in the plaint, which according to the plaintiff, was incorrectly stated. One of the amendments in the plaint was that by mistake and/or typographical error it was stated that Brihuspati Gope died while in the state of jointness. By amendment the plaintiff wanted to amend the aforesaid fact that Brihuspati Gope died while he was separate. The trial court found that the

amendment will not change the nature of the suit and in order to avoid multiplicity of litigations permitted the amendment as noted above.

The defendant-petitioner is the transferee of the land from the daughter of Brihuspati Gope.

It has been submitted on behalf of the petitioner that the trial had progressed. Issues were framed. The plaintiff examined several witnesses. Only the plaintiff himself was to be examined. At this stage, the application for amendment was filed without explaining anything therein that in spite of due diligence this mistake/error could not be noticed and hence the necessity of filing of the application. Referring to Order 6 Rule 17, the counsel has submitted that the application was fit to be dismissed. He relies in this regard on **2007 (1) BBCJ 152 (Syed Hasibuddin vs. Syed Md. Akram Hussain)**. It has next been submitted that an admission was made in the plaint that Brihuspati Gope was in jointness at the time of his death. Now the plaintiff by way of amendment wanted to interject that Brihuspati Gope died while living separate. This admission of the status of Brihuspati Gope cannot be withdrawn and/or amended invoking Order 6 Rule 17. He relied in this regard on **2012 (3) PLJR 128**.

Mr. Thakur, per contra, has supported the impugned order. It has been submitted that the suit was filed on 03.05.2002. The amendment in the Order 6 Rule 17 was made with effect from 1<sup>st</sup> of July, 2002. The law is settled that the amendment in the aforesaid provision shall not have effect in respect of the suit instituted earlier. He placed provision of Order 6 Rule 17 of the Code in order to buttress the point that wide jurisdiction/discretion is conferred on the court to allow such amendment if the ends of justice is subserved and the same guards against the multiplicity of litigation between the parties. Another exception to this is that the nature of suit by such amendment would not be allowed to be

changed. If a prejudice of grave nature is going to cause to other side then also the court can reject such application. Highlighting the finding of the trial court in the impugned order it has been submitted that the same is in accord with the rule-provision and does not merit interference.

From perusal of the order impugned it appears the trial court took the view that non grant of the amendment would result in substantial injustice to the party and will lead to further litigation. Meeting the argument of the counsel for the petitioner about admission of a fact it has been submitted that one statement made here and there reading out of context will not amount to admission. The fact on filtration of diverse statement made in different paragraphs of the plaint has to be considered as an admission of relevant fact which is sought to be withdrawn. This Court as well as the Apex Court has held on umpteen occasions that any admission or statement of particular fact can be explained by the parties by way of amendment either in the plaint or in the written statement.

I have considered the submissions of the parties and perused the reasoning(s) which have been assigned by the trial court in allowing the amendment. Although the amendments are sought in different paragraphs of the plaint but in substance it appear to be of trivial or formal in nature. It is not a case of the petitioner that by such amendment the nature of the suit has changed as has also not been found by the trial court. The jurisdiction of the court is also not under challenge. What has been submitted on behalf of the petitioner is that the plaintiff while seeking such amendment ought to have demonstrated and satisfied this Court that in spite of due diligence these facts were not brought on record by amendment at the initial stage of the suit. The trial had progressed wherein the witnesses were examined. The vital question is whether the Court in

exercise of supervisory jurisdiction under Article 227 of the Constitution of India should interfere with such order safeguarding the interest of the defendant. In the case of **Sameer Suresh Gupta vs. Rahul Kumar Agarwal [(2013) 9 SCC 374]** the scope and orbit of the jurisdiction under Articles 226 and 227 of the Constitution of India in consideration of such matter was dwelt upon and the opinion was expressed in paragraph 6. Relevant part thereof is extracted hereinabove:-

“6. In our view, the impugned order is liable to be set aside because while deciding the writ petition filed by the respondent the learned Single Judge ignored the limitation of the High Court’s jurisdiction under Article 227 of the Constitution. The parameters for exercise of power by the High Court under that Article were considered by the two-Judge Bench of this Court in *Surya De Rai vs. Ram Chander Rai*. After considering various facets of the issue, the two-Judge Bench culled out the following principles:

- 1. xxx xxx xxx
- 2. xxx xxx xxx
- 3. xxx xxx xxx

4. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.”

That apart, the provision of section 105 CPC is a safety valve

against any error committed by the court which provides that if any error or mistake has been committed by the trial court the same can be made one of the grounds of appeal. Judging the case in the light of the ratio enunciated by the Apex Court as also the reasons assigned by the trial court, in my view, the invocation of writ jurisdiction in the case shall not be an appropriate exercise.

The application is dismissed.

**(Kishore Kumar Mandal, J)**

HR/-

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