

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2825 of 2013

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Sheomandil Singh Son Of Ramsigashan Singh Resident Of Village - Gudia,
P.S. - Kudhani, District - Kaimur (Bhabua)

.... Petitioner.

Versus

Mudrika Singh Son Of Ramadhar Singh Resident Of Village - Gudia, P.S. -
Kudhani, District - Kaimur (Bhabua)

.... Respondent.

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Appearance :

For the Petitioner/s : Mr. Om Prakash Upadhyay, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

3 08-12-2015 Heard Mr. Om Prakash Upadhyay, the learned

counsel appearing on behalf of the plaintiff-petitioner and Mr.

D.Choubey, the learned counsel for the defendant-respondent.

Calling in question, the legal acceptability of the

impugned order by which the relief for amendment of plaint

sought by the plaintiff has been rejected, the present application

under Article 227 of the Constitution of India has been filed.

The suit has been filed for specific performance of

contract for sale of the lands as described in the scheduled of the

plaint. The basis of the suit was the agreement for sale dated

05.03.1994. The defendant filed the written statement contesting

the claim of the plaintiff and also denied his right, title and interest

over the lands mentioned in the deed of agreement for sale. The



plaintiff thereafter filed the petition for amendment in the plaint on the plea that the defendant had fraudulently got inserted wrong Khata Number in the description of the land in the deed of agreement for sale and therefore the amendments were sought by the plaintiffs for addition of averments and also the relief for declaration that the wrong Khata Numbers have been mentioned in the deed of agreement for sale. The learned court below by the impugned order has declined the prayer for amendment.

Mr.Upadhyay , the learned counsel appearing for the plaintiff- petitioner has submitted that the necessity for amendment in fact arose only after the filing of the written statement by the defendant wherein the defendant denied his title over the land mentioned in the deed of agreement for sale and also the suit land as mentioned in the plaint. It has been canvassed that thereafter the plaintiff made enquiries from the consolidation department also regarding the correct position and then prayed for appropriate amendments in the plaint. It has also been submitted that no prejudice will be caused to the defendant if the amendment as sought for are allowed as the suit is in initial stage where only the issues have been framed but adducing the evidence has not started.

Mr.Choubey, the learned counsel appearing for the

defendant-respondent, on the other hand, has submitted that the issues in the suit has been framed and therefore it will be deemed that the trial has begun and in view of the proviso to Order 6 Rule 17 C.P.C. the amendment cannot be allowed once the trial has begun. The learned counsel, however, has accepted that the court has not started taking evidence.

After considering the submissions and perusal of the records as well as the impugned order, it is manifest that the suit has been filed by the plaintiff for specific performance of contract for sale on the basis of agreement for sale. By the proposed amendment the plaintiffs have sought to change the Khata Number of the suit plot as mentioned in the plaint, to add the relief for declaration that the wrong Khata Numbers have been mentioned in the deed of agreement for sale and the related averments. It is now well settled that “there cannot be a situation when amendment of pleading irrespective of its nature would even remotely cause failure of justice or irreparable loss”. In the case of ***Rajesh Kumar Aggarwal Vs. K.K. Modi, 2006 (4) SCC 385*** the apex court has laid down that all amendments that may be necessary for determining the real question in controversy should be allowed. Admittedly the suit is at initial stage when only the issues have been framed. The proposed amendments will not

change the nature, scope and cause of action of the suit and appear to be necessary for determining all the controversies between the parties.

In view of the aforesaid facts and discussion, this Court is inclined to allow the prayer for amendment of the plaint but subject to payment of cost to the defendant. Accordingly, this writ application is allowed. The impugned order is set aside and the prayer for amendment as prayed by the plaintiff in his petition dated 06.08.2012 is allowed subject to payment of cost of Rs. 5,000/- to the defendant which must be paid within a period of six weeks from today. The learned court below is directed to grant opportunity to the defendant for filing additional written statement, if so prayed.

The writ application is, accordingly, allowed with aforesaid directions.

(V. Nath, J)

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