

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6217 of 2015

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1. Sudama Ojha son of Kapildeo Ojha
2. Rajdeo Tiwari son of Bishwanath Tiwari Both residents of Village -
Agahani, P.O. - Bal, P.S. - Rasulpur, District - Saran at Chapra.

.... Petitioner/s

Versus

1. Mrs. Gayatri Devi wife of Jitendra Ojha
2. Mrs. Manju Devi wife of Surendra Ojha
3. Mrs. Shail Kumari wife of Vidya Sagar Ojha
4. Ramawati Devi wife of Nityanand Ojha
5. Mr. Jagdish Prasad Ojha son of Parasnath Ojha All residents of Village -
Agahani, P.O. - Bal, P.S. - Rasulpur, District - Saran at Chapra.
6. Mr. Parmanand Pandey son of Ramdeo Pandey resident of village - Jai
Chapra, P.S. - Siswan, District - Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 17-12-2015 Heard learned counsel for the petitioner.

By the impugned order dated 11.02.2015, the learned
Sub Judge-VI, Saran, Chapra, allowed the amendment application
filed by the plaintiff-respondents.

Admittedly, the evidence of the defendant-petitioner has
not yet been started. The evidence of the plaintiff is going on. The
petitioner-defendant, by the amendment application, is praying for
insertion of a relief for removal of construction on residential
house made by the plaintiff.

It is well settled principles of law that at the time of

consideration of amendment application, the merits of the amendment sought for should not be decided as has been held by the Hon'ble Supreme Court in the case of ***Rajesh Kumar Aggarwal & Others Versus K.K. Modi & Others*** reported in ***(2006) 4 SCC 385***.

The Hon'ble Supreme Court in the case of ***Rajkumar Gurawara (Dead) through Others Versus S.K. Sarwagi and Company Private Limited & Another*** reported in ***(2008) 14 SCC 364*** has held that in case of amendment after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso to Order 6 Rule 17 of the Civil Procedure Code.

In the present case, as has been admitted by the learned counsel for the petitioner that the evidence of the plaintiff is still going on. So far as amendment sought for by the plaintiff is only an insertion of a relief and no new fact is being introduced by the petitioner. In such view of the matter, this writ petition stands dismissed.

(Mungeshwar Sahoo, J.)

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