

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19408 of 2010

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1. Kusum Choudhary @ Kusum Choudhain W/O Late Bindeshwari Choudhary @ Hunter Choudhary R/O Ward No. 5 Old, 6 New, Tilak Chauk, Madhubani, P.S.- Madhubani, Distt.- Madhubani

.... Petitioner/s

Versus

1. Gokulwali Ashram Through Its Sevait Baba Bimal Saran Das Ward No. 25, Madhubani Town, P.S. And Distt.- Madhubani
2. Uday Kumar Jaiswal S/O Late Bindeshwari Chaudhary @ Hunter Choudhary R/O Ward No. 5 Old, 6 New, Tilak Chauk, Madhubani, P.S.- Madhubani, Distt.- Madhubani
3. Prashant Kumar Jaiswal @ Baba S/O Late Bindeshwari Chaudhary @ Hunter Choudhary R/O Ward No. 5 Old, 6 New, Tilak Chauk, Madhubani, P.S.- Madhubani, Distt.- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MANOJ KUMAR

For the Respondent/s : Mr. Rakesh Chandra

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 11-08-2015

Heard Mr. Uday Chandra Prasad in support of the application and Mr. Rakesh Chandra for the Respondent no. 1.

The defendant of Title Suit No. 33 of 1991 has filed the present writ application to assail the order dated 7.4.2009 passed by the Trial Court rejecting the amendment petition (Annexure-2) filed by the defendant observing as under in paragraph 4 of the order:

“4. Perused the record. Evidence of plaintiff was closed on 16.07.08. Thereafter the case was fixed for defendant’s evidence and uptil now, defendant has examined altogether 23 witnesses on their behalf. It is second amendment petition of the petitioner-defendant. The proposed amendment of defendant in para 12, 13, 14, 15 and 23 of the



written statement is not new for defendant. If the present amendment petition of defendant-petitioner will be allowed, then the front of the defendant will be changed and also cause prejudice to plaintiff. At this stage, plaintiff is not in position to rebutt these new fact as plaintiff's evidence was closed. The defendant has not explained any cogent reason for delay in filling of the present petition. Moreover this amendment petition is not necessary for determining the real controversy between the party as it will cause further delay in the disposal of the case. It is true that amended C.P.C. 2002 will not apply regarding O6 R17 to present suit. Even then, the Court finds no merit in the amendment petition of petitioner-defendant. In the light of abovesaid discussion, the Court is of opinion that amendment petition dated 15.9.08 of petitioner-defendant is hereby rejected in the interest of justice."

The suit was filed for declaration of title and confirmation of possession by the plaintiff-respondent. The defendant appeared thereat and took the plea that the suit land belonged to some other person from whom the defendants had purchased the suit land. Issues were framed and the parties were allowed to lead evidence. In the meanwhile, an amendment petition was filed which was considered and allowed. The plaintiff examined in support of the case altogether 23 witnesses whereafter the case was posted for the evidence of the defence witness. At this stage, the present application (Annexure-2) was filed for effecting amendments by way of clarification in paragraphs 12, 13, 14, 15 and 23 of the written statement. The Court considered and rejected the same.

Contention of the petitioner is that the corrections/amendments

sought in the written statement are formal in nature. They do not change the nature of the suit. No prejudice of any nature is caused to the plaintiff. For the ends of justice, the Court ought to have allowed the same. He has relied on the case of **Baldev Singh Vs. Manohar Singh** reported in (2006) 6 SCC 498 in support of the said contention.

The plaintiffs-respondents have resisted the prayer contending that the suit is of the year 1991. The defendant had sufficient opportunity to get any amendment made before the witnesses were examined on behalf of the plaintiffs. In fact, such amendment on earlier occasion was prayed by the defendant which was allowed. By the present amendment, the defendant wants to insert new facts which, if allowed to be inserted, will cause serious prejudice to the plaintiffs since all witnesses of the plaintiffs have been examined in this case. Even recall thereof will cause prejudice to the plaintiff for the simple reason that the suit which was instituted in 1991 will protract further. In fact, the application seeking amendment has been filed to delay the disposal of the case.

On a consideration of the rival submissions and on perusal of the order the Court below has passed, in my view, exercise of jurisdiction under 227 of the Constitution of India shall not be an appropriate exercise of jurisdiction. The amendments which have been sought cannot be said to be formal as some more facts having

bearing on the case of the parties are sought to be inserted. The stage at which such amendment was sought and the age of the suit persuade this Court not to invoke the discretionary writ jurisdiction of this Court.

Before parting with the record, it is clarified that the order, in no way, shall prejudice the case of the parties and the Trial Court shall proceed to dispose of the suit in accordance with the law expeditiously. Both parties have undertaken to appear before the Trial Court within four weeks along with the copy of the present order enabling the Court to proceed and dispose of the case.

Pankaj/-

(Kishore Kumar Mandal, J)

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