

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.610 of 2016**

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Nagendra Nath Tiwary

.... Appellant/s

Versus

Raj Govind Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Srivastava

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

- 2 19-09-2016
1. Heard the learned counsel for the petitioner and the learned counsel for the respondent.
 2. Perused the impugned order dated 10.05.2016 passed by Munif, Jagdishpur, District Bhojpur in Title Suit No.42 of 2010 whereby the learned Court below rejected the amendment application.
 3. The amendment application is Annexure '3' to this Civil Misc. application. From perusal of the application, it appears that the plaintiff filed the said application for making certain correction in the schedule of the plaint. It is admitted fact that the evidence of the plaintiff is going on. The defendant is yet to begin the evidence.
 4. The Hon'ble Supreme Court in the case of **(2008) 14 SCC 364 Rajkumar Gurawara Vs. M/S. S.K.Sarwagi** has held



that ‘a pre-trial amendment can be allowed liberally as the opposite party would not be prejudiced because he will 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 and in such an event, it is incumbent on the part of the Court to satisfy the condition prescribed in Proviso to Order 6 Rule 17 CPC.’

5. In the present case, there is no question of conclusion of the evidence of the defendant arises because the evidence of the plaintiff is going on.

6. Further as stated above, the amendment sought for are in the nature of correction.

7. The Hon’ble Supreme Court in the case of *J. Samuel Vs. Gattu Mahesh 2012 (1) PLJR 412 SC* has held that ‘the due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to claim an anticipated relief. The term ‘due diligence’ is specifically used in the Code so as to

provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial. The typographically error is defined as a mistake made in the printed / typed material during a printing / typing process.

8. From perusal of the impugned order, it appears that the Court below has rejected the amendment application deciding the merit of the amendment sought for referring to the orders of consolidation offices.

9. It is settled principal of law that while deciding an application under Order 6 Rule 17, the Court is not required to decide the merit of the amendment sought for. In my opinion, therefore, the learned Court has wrongly refused to exercise the jurisdiction vested in it by law.

10. Accordingly, this Civil Misc. application is allowed. The impugned order is set aside. The amendment application filed by the plaintiff petitioner is thus allowed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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