

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.902 of 2016**

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Satrughan Singh son of late Kashinath Singh resident of Village - Devariya,
Police Station - Rivilganj, District - Saran at Chapra.

.... Petitioner

Versus

1. Lakshman Singh
2. Bharat Singh both are sons of late Kashinath Singh Both are residents of
Village - Devariya, Police Station - Rivilganj, District - Saran at Chapra.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Narendra Kumar

For the Respondent/s : Mr.

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

ORAL ORDER

2 22-10-2016 Heard the learned counsel for the petitioner and the

learned counsel for the respondents. The respondents have
appeared suo motu.

Perused the impugned order dated 20.06.2016 passed
by the learned Sub Judge-III, Chapra in Partition Suit No. 296 of
2014, whereby the learned court below rejected the amendment
application on the ground that the statement of the plaintiff that
there are typing mistake in the plaint, cannot be accepted and that
for the interest of justice the amendment cannot be allowed.

Perused the amendment application filed by the
plaintiff, which has been annexed as Annmexure-2 to this Civil
Miscellaneous Application.



The Learned counsel for the petitioner submitted that all the amendments sought for in the amendment application, are in the nature of correction of some typing mistake. However, the amendment sought for in paragraph Nos. 13, 14, 15 and 16 are on the question of fact. At paragraph 13, the plaintiff prayed for addition of a schedule in the plaint. At paragraph 14 also, amendment has been sought for, with respect to the relief portion and at paragraph 14, prayer has also been made for addition of some property in schedule 2 of the plaint. The court below without considering as to whether the amendment sought for are necessary for determination of the controversies between the parties and as to whether any prejudice is caused to the respondent, rejected the application on the ground that the statement has been made in the amendment application by the plaintiff that because of typing mistake some fact has been left and some wrong typing has been made.

On the other hand, the learned counsel for the respondents relying on the decisions of the Supreme Court in the case of **Revajeetu Builders and Developers versus Narayanaswamy and Sons and Others, 2009(10) SCC 84** submitted that the amendment cannot be allowed in the present case. According to the learned counsel since trial has already

commenced in view of proviso to Order 6 Rule 17 CPC, the plaintiff is required to explain the delay as to why prior to commencement of the trial, the fact, which is sought to be amended was not brought to the notice of the Court by way of amendment.

The Hon'ble Supreme Court in the decision relied upon by the learned counsel for the respondent itself has held that "the Courts have very wide discretion in the matter of amendment of pleadings. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment. The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side."

In the present case at our hand, as stated by the learned counsel for the petitioner, none of these important conditions for consideration has been made by the trial court in the impugned order.

So far prejudice or injustice to the respondent is



concerned, the Hon'ble Supreme Court in the case of **Rajkumar Gurawara Versus S.K. Sarwagi and Company Private Limited and Another, 2008(14) SCC 364** has held that “a pre trial amendment could have been 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 conditions prescribed in the proviso to Order 6 Rule 17 of the Code of Civil Procedure.”

Admittedly, in the present case only two witnesses of the plaintiff have been examined. Therefore, the defendants are yet to produce their evidence. In such circumstances, no prejudice will be caused to the defendants as they will have an opportunity to meet the case of the plaintiff brought by way of amendment by filing additional written statement.

The Hon'ble Supreme Court recently in the case of **L.C. Hanumanthappa Versus H. B. Shivakumar, 2016(1) SCC 332** has held that “all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the

real questions in controversy between the parties.”

As stated above, in the present case, the court below has not considered as to whether the amendment sought for is necessary for determining the real questions in controversy between the parties. The application has been rejected on technical grounds. From perusal of the amendment application as stated above, it appears that most of the amendments sought for by the plaintiff are in the nature of correction only. The other parts of the amendment which are sought by the plaintiff are in the relief portion and schedule of the property.

In view of the above facts and circumstances of the case, in my opinion, the court below has refused to exercise the jurisdiction vested in it by law and passed the order in the manner not permitted by law and thereby rejected the application for amendment occasioning failure of justice.

In the result, this Civil Miscellaneous application is allowed. The impugned order dated 20.06.2016 passed by learned Sub Judge-III, Chapra in Partition Suit No. 296 of 2014 is, hereby, set aside.

The amendment application filed by the plaintiff is allowed, subject to payment of cost of Rs. 3,000/- to be paid by the plaintiff to the defendant-respondents in the court below.

The defendant-respondents are at liberty to file additional written statement and rebut the case of the plaintiff made in the amendment application.

(Mungeshwar Sahoo, J)

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