

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1813 of 2016

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Md. Neyaz Akhtar & Ors

.... Petitioner/s

Versus

Godhan Prasad Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.M. Shabbir Alam

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 23-08-2016

Heard learned counsel, Mr. S.M. Shabbir Alam,

appearing for the petitioners and learned counsel, Mr. Suresh Mishra, appearing for the respondent Nos. 2 and 3 and also learned counsel, Mr. D.K. Singh, appearing for respondent No.1.

2. This application, under Article 227 of the Constitution of India, has been filed by the plaintiffs-petitioners against the order dated 06.11.2015 passed by the Sub-Judge-IV, Munger in T.S. No. 142 of 1988, whereby the learned court below rejected the amendment application filed by the plaintiffs-petitioners under Order 6 Rule 17 C.P.C.

3. It appears that the plaintiffs-petitioners filed the aforesaid suit for specific performance of contract. In the suit, the plaintiffs claimed to be an exclusive owner of the property i.e. holding No. 109. Subsequently, after the judgment passed in T.S. No. 20 of 1987, in the year, 1997, the amendment application was



filed by the plaintiffs bringing to the notice of the court below about the subsequent development and accordingly, the petitioners prayed for amendment in the relief portion also. The court below, by the impugned order, held that according to proviso to Order 6 Rule 17 C.P.C., no amendment can be allowed after commencement of trial and no reason has been assigned by the plaintiffs-petitioners as to why the amendment, sought for, was not claimed prior to commencement of argument of the suit.

4. Learned counsel, Mr. Shabbir Alam, appearing for the petitioners submitted that the suit is of the year 1988 and whatever the amendments sought by the plaintiffs are all subsequent developments. According to law, the courts to take the fact of subsequent development and then decide the lis between the parties. The court below did not consider the fact that the amendments, sought for, by the plaintiffs are all subsequent developments and rejected the application only on the ground of proviso to Order 6 Rule 17 C.P.C., which is not applicable in the present case. The learned counsel further submitted that the learned court below has misunderstood and mislead the judgment of the Supreme Court reported in **2009 (10) SCC 84**. In fact, the decision is in favour of the plaintiffs.

5. The amendment application has been filed at the very

belated stage and the learned court below has rightly considered the proviso to Order 6 Rule 17 C.P.C. If the amendment is allowed, then cost may be awarded.

6. The learned counsel for respondent No.1 has submitted that he has already sold the property to respondent No. 2. Therefore, he is supporting the case of the respondents.

7. From perusal of the impugned order, it appears that the court below, primarily, held that no reason has been assigned as to why the amendment, sought for, was filed at belated stage as the plaintiffs had the knowledge about the judgment and decree passed in T.S. No. 20 of 1987 in the year 1997. Nowhere, the Court recorded that the amendment, sought for, is not subsequent development nor the court below recorded that the amendment, sought for, is not necessary for determining the controversy between the parties. It further appears that the court below also considered the proviso to Order 6 Rule 17 C.P.C. and held that in view of this provision, no amendment can be allowed after commencement of the trial. It may be mentioned here that the Hon'ble Supreme Court in **2007(1) SCC 765** and **2012 (9) SCC 69** has rightly held that the proviso to Order 6 Rule 17 C.P.C. is not applicable to the suit in view of the provision of the C.P.C. amendment Act of 2002. Admittedly, the present suit is of the year

1988. It is also admitted that the amendment, sought for, are all subsequent events. It is also admitted that the property has been sold by the respondent No.1 in favour of respondent No.2. Therefore, the relief has been claimed in view of the subsequent development.

8. In view of the above facts and circumstances of the case, the order passed by the court below is against the provision of law and settled proposition of law laid down by the Hon’ble Supreme Court. As such, the impugned order is set aside. This C.W.J.C. is allowed and, accordingly, the amendment application filed by the petitioner is allowed.

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(Mungeshwar Sahoo, J)