

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2553 of 2015**

Prakash Kumar Sinha

.... .... Petitioner/s

Versus

Sri Hira Lal Sah

.... .... Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Shri Krishna Sinha

For the Respondent/s : Mr.

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

ORAL ORDER

3 29-03-2016

Heard learned counsel, Mr. Sri Prakash Srivastava

appearing for the petitioner and learned counsel, Dr. Anand Prasad, appearing for the sole respondent.

2. The Sub-Judge-X, Patna rejected the amendment application filed by the plaintiff-petitioner in Title Suit No. 118 of 2012 by terms of order dated 03.03.2014.

3. It appears that a suit was filed for declaration of title on the basis of an agreement between the parties. Issues were framed and thereafter amendment application was filed for deleting the prayer for declaration of title and prayed for decree for specific performance of contract. The court below rejected the said application holding that the trial has commenced and because of proviso to Order 6 Rule 17 C.P.C., the amendment cannot be allowed.



3. Learned counsel Mr. Sri Prakash Srivastava submitted that in fact all the necessary averments regarding agreement and payment of part consideration amount to the extent of 35 lakh out of 85 lakh are there. Therefore, instead of relief for decree for specific performance of contract wrongly prayer was made for declaration of title and, therefore, it was necessary for just decision of the controversies between the parties to the suit but the court below wrongly held that trial has commenced although on the date of the order dated 03.03.2014, evidence had not started.

4. On the other hand, Dr. Anand Prasad, learned counsel for respondent submitted that, in fact, the petitioner has filed the suit on the basis of forged agreement and it has been filed only after the eviction suit filed by the respondent against the petitioner. This petitioner is a tenant under the plaintiff-respondent and, therefore, he is trying to delay his eviction from the suit premises and has filed this frivolous suit. Learned counsel relied upon the decision of the Hon'ble Supreme Court reported in **2013 (1) PLJR 356 SC** and submitted that the amendment after commencement of trial cannot be allowed. According to learned counsel, a criminal case has also been filed alleging that the agreement is forged

agreement wherein cognizance has already been taken.

5. From perusal of the impugned order, it appears that the court below has considered the proviso to Order 6 Rule 17 C.P.C. and it is admitted fact that till the order was passed i.e. 03.03.2014, no evidence had commenced. Issues were framed on 11.07.2013. Although the plaintiff was directed to produce the evidence, no evidence had been produced by the plaintiff. From perusal of the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the respondent, it appears that in that case evidence had already been commenced. The Hon'ble Supreme Court in the case of ***RajKumar Gurawar (dead) through LRs. Vs. S.K. Sarwagi and Company Pvt. Ltd*** reported in ***2008 (14) SCC 364*** 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 evidence, the question of prejudice to the opposite party may arise and in such an even, it is incumbent on the part of the court to satisfy the condition prescribed in the proviso to Order 6 Rule 17 C.P.C.

6. The Hon'ble Supreme Court in the case of ***Revajeetu***



***Builders and Developers Vs. Narayanaswamy and Ors.*** reported in **2009(10)SCC 84** 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 controversies. If that condition is not satisfied, the amendment cannot be allowed. The other important condition, which should govern the discretion of the court, is the potentiality of the prejudice or injustice which is likely to be caused to the other side.

7. The Hon'ble Supreme Court in the case of ***Ramesh Kumar Agarwal Versus Rajmala Export*** reported in **2012 (5) SCC 337** has held that while deciding the application for amendment ordinarily the Court must not refuse bonafide legitimate, honest and necessary amendments and should never permit malafide and dishonest amendments. The purpose and object of Order 6 rule 17 C.P.C. is to allow either party to alter or amend. Pleading in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Court while deciding such prayer should not adopt hyper-technical approach. Liberal approach should be

the general rule. Particularly, in cases where the other side can be compensated with cases. Normally amendments are allowed in the pleading to avoid multiplicity of the litigation.

8. The court below has not considered all these settled principles of law. In the present case since the plaintiff had not started the evidence on the date of the impugned order, there is no question of any prejudice to the other side arises. If amendment is not allowed, then naturally the plaintiff will have to file another suit for specific performance of contract and it will lead to the multiplicity of proceedings. It may be mentioned here that when all the averments are available in the plaint, the plaintiff is only praying for decree for specific performance of contract. Therefore, the amendment in no case can be termed as malafide. So far the submission of the learned counsel for the respondents that the cognizance has been taken in a criminal case or that there is delay may be caused or that the suit has been filed on the basis of forged agreement is concerned, it may be stated here that these are relating to the merits of the amendment sought for, which cannot be considered at the time of hearing of the amendment application as has been held by the Supreme Court in a decision reported in **2006 (4) SCC 385**. Further, if the impugned order is allowed to the

stand, it will not only occasion failure of justice but will also lead to multiplicity of proceedings and will cause injustice to the petitioner. Thus, this writ application is allowed. The impugned order is set aside. The amendment application filed by the petitioner is allowed.

(Mungeshwar Sahoo, J)

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