

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2910 of 2016

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Balmiki Prasad Singh

.... Petitioner/s

Versus

Tarun Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 05-10-2016 Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. Perused the impugned order dated 28.10.2015 passed
by Subordinate Judge-II, Munger in Title Suit No.14 of 1999
whereby the learned court below allowed the amendment
application filed by the plaintiffs-respondents.

3. At the time of hearing of this writ application the
learned counsel submitted that he is challenging only one part of
the amendment detailed in Clause (x) of the proposed amendment
by which a new paragraph i.e. paragraph 10A is sought to be
added in the plaint. The learned counsel further submitted that the
suit was filed by the father of the plaintiffs namely Ratneshwar
Prasad Singh @ Ratan Kumar only against defendant challenging
the sale deed executed by him in favour of the defendant. He died.
After his death the present respondents have been substituted as



plaintiffs in the suit. The present plaintiffs by filing amendment application prayed for amendment for adding paragraph 10A to the effect that Ratneshwar Prasad Singh had no right, title to transfer any part of undivided residential house by sale deed dated 01.11.1996 and the defendants have not acquired any right, title even possession by alleged purchase and they have no right to joint possession with the plaintiff over the alleged purchased land. According to the learned counsel, this amendment sought for cannot be permitted in view of the provision as contained in Order 22 Rule 4(2) of the Code of Civil Procedure. In support of his contention he relied upon the decision of the Supreme Court, (1986) 4 Supreme Court Cases 155.

4. On the other hand, the learned counsel for the respondents submitted that this part of the amendment only relates to the legal position. According to the learned counsel by amendment the plaintiffs only sought to bring to the notice of the court about the law. The learned counsel further submitted that still evidence of the petitioner i.e. the defendants in the court below has not started, therefore, there is no question of prejudice to the defendant-petitioner arises. The learned counsel further submitted that the amendment can be allowed if amendment sought for will be for the purpose of shorting litigation and if it is

not allowed then there will be multiplicity of proceeding.

5. It is admitted fact that the father of the plaintiffs-respondent nos.1, 3 and 4 and husband of respondent no.2 was the sole plaintiff in the suit. He died and then these plaintiffs have been substituted in place of the sole plaintiff.

6. Order 22 Rule 4(2) of the Code of Civil Procedure provides that any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant. In view of this provision the legal representative has the right to make the defence which is appropriate to his character as legal representative. He cannot set up an independent defence of his own.

7. The Hon'ble Supreme Court in the case of **Bal Kishan Vs. Om Prakash & Anr., (1986) 4 Supreme Court Cases 155** has held that a person added in place of defendant and not in his personal capacity cannot raise plea which was personal to the deceased. In the present case, admittedly the amendment sought for is the independent right which the plaintiffs-respondents are making by way of amendment. In view of the provision which is applicable in cases of the legal representatives of the defendant, in cases of legal representatives of the plaintiff, same analogy will apply. The dispute which is being raised by the

substituted plaintiffs is against their father. This dispute will be the dispute between father and substituted legal representatives.

8. So far submission of learned counsel for the respondents that this is a question of law is concerned, it may be mentioned here that the question of law is not required to be pleaded. The question of fact is only required to be pleaded. If the argument of learned counsel is accepted then even if amendment is refused then also it will not cause any prejudice to the plaintiffs-respondents. The law can be applied in the facts and circumstances of each case. So far the submission of learned counsel for the respondents that no prejudice will be caused to the petitioner is concerned, in my opinion, on this ground regarding no prejudice, what has been prohibited under law, cannot be permitted to be allowed by way of amendment.

9. In view of the above facts and circumstances of the case, it appears that while passing the order the court below has not considered at all the legal position that the plaintiffs-respondents are the substituted legal representatives of the original plaintiff and, therefore, now they cannot raise the dispute between the father and themselves by way of amendment. If it is their independent right then they are at liberty to file separate proceeding questioning the sale deed in favour of defendant in any

other ground including the ground, which is sought for by way of amendment.

10. In the result, that part of impugned order, which is mentioned above, is hereby set aside and this writ application is allowed.

(Mungeshwar Sahoo, J)

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