

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3164 of 2015

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Smt. Shanti Mishra & Ors

....Defendants/ Petitioners

Versus

Chandan Kumar

.... Plaintiff/Respondent

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Advocate

: Mrs. Alka Verma, Advocate

For the Respondent/s : Mr. Kamal Nayan Chaubey, Sr. Advocate

: Mr. Bajrangi Lal, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

CAV ORDER

Dated: 18th March, 2016

I have heard the learned Senior counsel, Mr. S.S.

Dwivedi, for the petitioners and the learned Senior counsel

Mr. K.N. Chaubey for the respondent.

2. Defendants have filed this writ application under Article 227 of the Constitution of India for setting aside the order dated 06.08.2014 passed by the Sub-Judge-III, Samastipur in Title Suit No. 216 of 2006, whereby the court below has allowed the amendment application filed by the plaintiff-respondent for amendment of the plaint.

3. It appears that the plaintiff filed the aforesaid suit for declaration of title and confirmation of possession and in the alternative prayed for recovery of possession of the suit land. The defendants filed written statement. Thereafter amendment

application was filed seeking some amendments in the plaint. By the impugned order, the court below has allowed the amendment application on the ground that by the amendment, the plaintiff is not trying to withdraw the admission and that still the parties have not started examining the witnesses.

4. The learned Senior counsel, Mr. S.S. Dwivedi for the petitioners while placing the statements made in paragraph- 14 of the plaint submitted that in the plaint, the plaintiff specifically admitted the fact that the land acquisition proceeding was dropped and the lands remained in possession of the land holder intact but by amendment application, the plaintiff is, now, withdrawing the said admitted fact, which clearly affect the right of the defendants. The amendment sought for is also *malafide*, therefore, also the amendment would not have been allowed by the trial court but the lower court below wrongly allowed the amendment application. The learned Senior counsel placed his reliance on various decisions of the Hon'ble Supreme Court and other High Courts as well as this Court also on the principle that 'admission cannot be withdrawn by a party'. The decisions are;

- (i) **2012 (3) PLJR 128 (Ragbansh Mani Vs. Lakshman Prasad)**, wherein it has been held that admission once made cannot be permitted to be withdrawn;
- (ii) **AIR 1959 SC 356**, wherein it has been held that even if, the

statements made is not communicated to the other side, it can be termed as admission;

(iii) *AIR 1957 All. 1 Full Bench*, wherein it has been held that an admission is concession or voluntary acknowledgment made by a party or someone identified with him in legal interest or the existence of certain documents, which are in issue or relevant to an issue in the case;

(iv) *2009 (10) SCC 84*, wherein also it has been held that categorical admission made by a party cannot be allowed to be withdrawn by way of amendment.

The learned Senior counsel also relied upon an unreported judgment of Delhi High Court obtained from Manupatra passed in I.A. No. 1679 of 2011, I.A. No. 13043 of 2011 in C.S. (OS) No. 1449 of 2011 decided on 04.02.2015, wherein also it has been held that admission cannot be permitted to be withdrawn.

5. On the other hand, the learned Senior counsel, Mr. K.N. Chaubey for the respondent submitted that here, no case or fact has been admitted so as to give right to the other side. The fact that the land acquisition proceeding was dropped is admitted and, therefore, there is no question of admission of any fact arises. The learned court below has considered this argument and thereafter found that there is no admission as such. The



amendment application has been filed for amendment of the plaint because there was subsequent land acquisition proceeding in the year 2012 and some of the lands were acquired, which is also admitted position, which would be evident from the impugned order. The petitioners, herein, before this Court are purchasers from Manu Devi in the year 2013 although there was injunction order passed by the court. Therefore, the rights of the petitioners itself is doubtful as the Hon'ble Supreme Court in a decision reported in **1996 SC 135** has held that if sale deed is executed in utter violation of the injunction order that same is to be ignored. Further, in the present case, this Court, while exercising supervisory jurisdiction, cannot act as an appellate court and cannot substitute own finding. Further, the learned Senior counsel submitted that it is a pre-trial amendment and no prejudice is caused to the other side.

6. Perused the order passed by the court below. From perusal of the order, it appears that the court below has considered the points, which are being raised before this Court elaborately. It further appears that so far the reply to paragraph -14 of the plaint is concerned, the defendants have clearly admitted the fact that the lands acquisition proceeding was dropped. From the order, it is also clear that the defendants admitted that recently another land acquisition proceeding was started, wherein the department

has acquired one Katha land of plot No. 788, which has been purchased by defendant Nos. 2 and 3, petitioners. Now, therefore, it becomes evident that the so called admission made at paragraph 14 of the plaint is admitted position. Now, even if, that admitted fact is withdrawn by the plaintiff, it will never cause any prejudice to the other side because the defendants also admitted the fact that earlier the land acquisition proceeding was dropped. Now that statement become useless. The petitioners have purchased 10 Kathas of land from Manu Devi. According to the plaintiff, after subsequent acquisition of the said land, the defendants have encroached upon the land of the plaintiff and even they dispossessed him. Therefore, the plaintiff also prayed for recovery of possession after removal of encroachment. Now, can it be said that this fact, now, the plaintiff is alleging, is prejudicial to the defendants, who are the purchaser in spite of injunction order as claimed by the respondent. The plaintiff has prayed for declaration of title and recovery of possession then in this suit whether this issue, which is being raised, now, can be decided or not or for that purpose, the plaintiff will be directed to file another suit. The answer will be '**No**'. Therefore, whether there is encroachment made by the defendants or not is to be decided in the present suit and for deciding this issue, the amendment sought for is essential in the present case. It will not



be out of place to state here that all admissions may be statements but all the statements are not admission. Since the defendants admitted the fact that the earlier land acquisition proceeding was dropped and, now, by way of amendment, the plaintiff is deleting that statement made in paragraph- 14, no right accrued to the defendants. Therefore, even if, it is construed here that it is admission of the plaintiff but then no right accrued to the defendants, as such, there is no question of prejudice to the defendants arises. No doubt, it is well settled principle of law that the categorical admission made by the plaintiff in the plaint cannot be permitted to be withdrawn but for that purpose, a right must accrue to the other side and it must prejudice to the other side then only the said principle will apply. All the decisions relied upon by the petitioners are in the same line but the facts of those cases are clearly distinguishable in the present case because in all those cases, evidences were adduced by the parties and by the admission, right had accrued in favour of the defendants and, therefore, either the High Court or the Supreme Court held that the categorical admission cannot be allowed to be withdrawn.

7. In the present case, it is admitted position that only issues have been framed and parties are yet to adduce evidence. Therefore, merely because the petitioners are saying that the amendment application is *malafide*, can it be relied upon,

particularly, when the evidence has not yet started and the fact of dropping of the earlier land acquisition proceeding is admitted by the petitioners and subsequent land acquisition proceeding and acquisition of land from plot No. 788 is admitted by them.

8. The Hon'ble Supreme Court in the case of ***Raj Kumar Gurawara Vs. S.K. Sarawagi*** reported in ***2008 (14) 364*** has clearly held at paragraph-13 that Order 6 Rule 17 C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleading at any stage of the proceeding of such terms as may be just. Such amendments seeking determination of the real question in controversy between the parties shall be permitted to be made. Pre- trial amendments are to be allowed liberally than those, which are sought be made after the commencement of the trial. As rightly pointed out by the High Court that in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made, in the later case, only after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso to Order 6 Rule 17 C.P.C. In the present case, admittedly, no evidence has yet commenced. The court below has recorded finding that no right has accrued to the defendants-petitioners

according to the statement made in paragraph-14, I find no reason to contradict this finding. I also find that since the evidence has not yet commenced, there is no question of prejudice arising. The amendment sought for is necessary for just decision of the controversy between the parties. Further since it is admitted fact that subsequent to filing of the suit, the second land acquisition proceeding was started and some properties have been acquired out of plot No. 788, which is admitted by the petitioners themselves, the amendment sought for cannot be said to be *malafide*. The Hon'ble Supreme Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Ors.*** reported in **2009 (10) SCC 84** has held that all amendments, which are *bonafide*, legitimate and are necessary for just decision of the controversy between the parties must be allowed.

9. The Hon'ble Supreme Court in the case of ***Jai Singh and others Versus. Municipal Corporation of Delhi and Another*** reported in **2010 (9) SCC 385** has held that the supervisory jurisdiction cannot be exercised as an appellate court and the High Court cannot substitute its own finding of fact. The exercise of supervisory jurisdiction is limited to the extent that if the order passed is in flagrant disregard of the procedure of law or principle of natural justice or the Court has assumed a jurisdiction, which it has not or the court below has exercised the

jurisdiction in the manner not permitted by law, then, only the High Court shall exercise the jurisdiction. In the present case, from perusal of the impugned order, as discussed above, it is clear that the court below has passed a reasoned order and exercised the jurisdiction vested in it under Order 6 Rule 17 C.P.C according to the settled principles.

10. In view of the above factual position and settled principle of law, I do not find any reason to interfere with the impugned order passed by the court below in exercise of supervisory jurisdiction.

11. In the result, this writ application is dismissed.

(Mungeshwar Sahoo, J.)

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