

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8956 of 2014

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Lal Baboo Singh son of Sri Ram Swaroop Singh resident of Mohalla - Azad Colony, Road No.1, Maripur, P.S. Kazi Mohammadpur, P.O. Muzaffarpur Town, District - Muzaffarpur

.... Petitioner.

Versus

1. Md. Javed Alam son of Md. Wakif resident of village AND P.O. Ladaura, P.S. Kudhani, District - Muzaffarpur
2. Most. Asgari Begum widow of Late Afzal Hussain
3. Md. Shah Alam
4. Md. Zafar
5. Md. Asgar Hussain
6. Khalid Tanwir
7. Tauquir Hasan Nazmi All sons of Late Afzal Hussain
8. Majda Khatoon D/o Late Ahmed Hussain, W/o Quayum
9. Bibi Sahjadi Begum D/o Late Ahmed Hussain, W/o Taslim
10. Saida Begum D/o Late Ahmed Hussain, W/o Md. Tasleem Siddiqui
11. Bibi Sajda Khatoon @ Mirkhun D/o Late Ahmed Hussain, W/o Late Md. Mustaque
12. Azfar Hussain son of Md. Afzal Hussain All residents of Mohalla - Maripur, P.S. Kazi Mohammadpur, P.O. Muzaffarpur Town, District - Muzaffarpur
13. Smt. Janki Devi W/o Sri Raj Narayan Singh R/o Mohalla - Maripur, P.S. Kazi Mohammadpur, P.O. Muzaffarpur Town, District - Muzaffarpur
14. Md. Khalil son of Late Chhitnoo resident of Mohalla - Maripur, P.S. Kazi Mohammadpur, P.O. Muzaffarpur Town, District - Muzaffarpur

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-04-2016

V.Nath, J.

Heard Mr.S.S.Dwivedi, learned senior counsel for
the petitioner.

Calling in question the legal acceptability of the
impugned order by which the prayer of the defendant 2nd set for
amendment of the written statement has been allowed, the plaintiff

has filed this application under Article 227 of the Constitution of India.

The facts in detail need not be explicated in view of the limited nature of controversy at present. Suffice it to state that the plaintiff-petitioner has filed a suit for declaration of his title and grant of permanent injunction against the defendants restraining them from dispossessing the plaintiff from the land mentioned in Schedule-II of the plaint. The written statement has been filed on behalf of the defendant 2nd set (defendant nos.2 to 12) contesting the claim of the plaintiff. The defendant 2nd set has also raised a counter claim seeking relief of declaration of title and recovery of possession over the properties described in Schedule-A of the counter claim besides other reliefs. A petition seeking amendments in the written statement was filed subsequently by the defendant 2nd set seeking amendments as mentioned in the amendment petition (Annexure-3 to the supplementary affidavit filed by the petitioner). By the impugned order the learned court below has allowed the amendment as prayed by the defendant 2nd set respondent.

Criticizing the impugned order the learned senior counsel for the petitioner has submitted that the learned court below has committed error of jurisdiction and material irregularity in passing the impugned order. It has been contended that by the proposed



amendments that the defendant 2nd set has sought to resile from the admissions earlier made which cannot be allowed. It has also been emphatically submitted that the petition for amendment though carries the affidavit by one of the defendants (defendant 2nd set) but the said petition has not been verified as required under Order 6 Rule 15 C.P.C. It has thus been submitted that the amendment petition in absence of the verification as required by law was not maintainable at all. The learned senior counsel, however, has accepted that the trial in the suit has still not commenced.

After considering the submissions and the materials on record including the impugned order, it is transparent that the written statement on behalf of the defendant 2nd set has been filed on 08.12.2011 and on the very next date in the suit i.e. 17.01.2012 the petition for amendment has been filed. The learned court below after examining the nature of the proposed amendments has also found that the same if allowed would enable the court to decide the real controversy between the parties. This view expressed by the learned court below is in consonance with the dictum laid down by the apex court in the case of **Rajesh Kumar Aggarwal V. K.K.Modi (2006)4 SCC 385** where it has been ruled as follows:

18. “...As discussed above, the real controversy test is the basic or cardinal test and it is the

primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is the amendment will be allowed; if it is not, the amendment will be refused...”

The similar view has been expressed by the apex court in the case of **Surender Kumar Sharma Vs. Makhan Singh, (2009)10 SCC 626.**

5. “.....It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs...”

So far as the submission with regard to resiling from admission by the defendant 2nd set by the proposed amendment is concerned, it is well settled by now that even a categorical admission



made in the pleading can be explained or clarified as held by the apex court in ***Gautam Sarup Vs. Leela Jetly, (2008)7 SCC 85***. In the present case, after considering the averments made in the written statement alongwith the proposed amendment, it does not appear that any categorical admission in the sense of being a true and clear admission has been made in the written statement and is being tried to be withdrawn by way of amendment. The fact at this juncture also cannot be ignored that the suit is at the pre-trial stage, and in the opinion of the learned court below the proposed amendments are relevant for determination of the real controversy between the parties.

Much emphasis has been led on behalf of the petitioner on the fact that the petition for amendment has not been verified as required under Order 6 Rule 15 C.P.C. However, from the perusal of the said provision it becomes manifest that the said provision relates to the pleadings which according to Rule 1 of Order 6 only mean plaint or written statement. No provision of law or precedent has been brought to the notice of the court on behalf of the petitioner to show that the rigours of Order 6 Rule 15 C.P.C. shall also be applicable with regard to a petition for amendment as well. It would be condign here to take into notice the provision as contained in Section 99 C.P.C., though in the context of a decree passed in a suit, but presaging the intendment of the legislature that any error, defect or

irregularity in any proceedings in the suit which does not affect the merits of the case or the jurisdiction will not be a ground for reversing or substantially varying the decree or remand by the appellate court. In the present case, admittedly, the petition for amendment has been accompanied by an affidavit by one of the defendants and in this view of the matter also the absence of verification of the amendment petition appears to be a mere irregularity not going to the root of the jurisdiction of the court requiring interference in the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India.

In result, this Court does not find any merit in this application, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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