

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6188 of 2016

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Kishun Pandey

.... Petitioner/s

Versus

Rajeshwar Pandey & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 19-10-2016 **1.** Heard the learned senior counsel, Mr. T. N. Maitin, for the defendant petitioner and the learned counsel, Mr. Lal Sachindra Kumar, for the plaintiff respondent.

2. Perused the order dated 01.02.2016 passed by Sub Judge VIII, Buxar in Title Suit No.369 of 2010 whereby the learned Court below allowed the amendment application filed by the plaintiff respondents.

3. It appears that partition suit No.369 of 2010 was filed by the plaintiff respondent. Evidences were adduced by both the parties. At the stage of argument, this amendment application was filed alleging that recently the plaintiffs came to know that some of the joint family properties have not been included in the schedule of the plaint. Therefore, the said properties may be added in Schedule II of the plaint. Objection was filed by the



defendant petitioners on various ground :- (i) the first ground taken by the petitioner is that the son of the plaintiff cannot file amendment application (ii) at the stage of argument, no amendment could have been allowed by the Court below. Considering both the objections, the Court below by the impugned order allowed the amendment application.

4. It may be mentioned here that according to the plaintiff just before filing of the amendment application, it came to the knowledge of the plaintiff that some schedule of the properties are left to be included in the schedule of the plaint. The objection of the defendant is not that the joint family property alleged by the plaintiff is in fact not the joint family property or that the properties are the self acquired property of the defendant. The only objection is that some of the plaintiff could not have filed the application or that the amendment could not have been allowed considering the Proviso to Order 6 Rule 17 of the Code of Civil Procedure.

5. So far the first objection that the son of the plaintiff could not have filed the amendment application is concerned, it may be mentioned here that the application was filed by the plaintiff but the affidavit has been sworn by the son of plaintiff



No.1. In such view of the matter, there is no question of prejudice to the petitioner arises. Further, swearing of affidavit by son of the plaintiff does not go to the root of the merit of the amendment application and it does not touch the jurisdiction of the Court by not allowing the amendment application, particularly when a fact has been brought to the notice of the Court that some joint family property has been left out for partition. So far Proviso to Order 6 Rule 17 is concerned, it is settled principal of law that if the Court is satisfied that the amendment sought for is necessary for just decision of the controversy between the parties and the delay has been explained then the Court has the jurisdiction to allow the amendment application. Here the plaintiff respondent explained the delay alleging that recently from one of the box, some paper were found which shows that some properties have been left to be included in the partition suit.

6. The Hon'ble Supreme Court in the case of *L.C. Hanumanthappa Vs. H.B.Shivakumar (2016) 1 SCC 332* has held that **'all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, (b) of being necessary for the purpose of determining the real questions in controversy between the parties.**

7. In view of the settled proposition of law when it becomes admitted fact, in the present case that the property sought to be added in the schedule of the plaint is joint family property, why it should be left for partition. If it is left then it will lead to multiplicity of proceeding. No new case is being pleaded by the plaintiff. Only in the schedule of the plaint, certain properties are sought to be added for partition. If at all the defendant petitioner have got any exclusive right to the property, they are at liberty to file additional written statement to that effect but on the ground that the affidavit has been sworn by the son of the plaintiff or that at belated stage, the amendment has been sought for, the amendment application should not be rejected. The learned Court below has rightly exercised a jurisdiction vested in it by law.

8. Thus, I find no reason to interfere with the impugned order. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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