IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.202 of 2016

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Md. Nejamuddin

.... Appellant/s

Versus

Israil Miya & Ors

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Ranjan Kumar Dubey
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

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3 12-07-2016 **1.** Heard the learned counsel, Mr. Ranjan Kumar Dubey, for the petitioner and the learned counsel, Mr. Shailendra Kumar Dwivedi, for the respondent.

2. Perused the order dated 26.02.2016 passed by Sub Judge 8th, Siwan in Title Suit No.245 of 2014 whereby the learned Court below rejected the amendment application filed by the petitioner on two grounds. Firstly, the learned Court below considered the amendment application on merit and then held that the question which is being raised by way of amendment has already came into evidence of the plaintiff and secondly the Court below rejected the application considering the Proviso to Order 6 Rule 17 CPC.

3. It may be mentioned here that the written statement was filed by the defendants in January, 2015 and the amendment application has been filed in September, 2015. According to the plaintiff, he had no knowledge about the proceeding whereby the

Basgit parcha has been issued in favour of the defendants and this fact is sought to be introduced by way of amendment.

4. The plaintiff has filed the suit for declaration of title and recovery of possession. So far the question of merit is concerned, the Hon'ble Supreme Court in the case ***of Rajesh Kumar Agrawal vs. K.K. Modi (2006) 4 SCC 385*** has held that **'while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise it should not record a finding on the merit of the amendment and the merit of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.**' In the present case, in view of the decision, the Court below has assigned the reason contrary to the law laid down by the Supreme Court.

5. So far second point regarding Proviso to Order 6 Rule 17 is concerned, it is admitted fact that after framing of issues, only one witness on behalf of the plaintiff has been examined.

6. The Hon'ble Supreme Court in the case of **Raj Kumar Gurawar (dead) through LRs. Vs. S.K. Sarwagi and Company Pvt. Ltd. 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 the evidence, the question of prejudice to the opposite party may arise and in such an 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 as stated above, there is no question of prejudice to the other side arises because the evidence of the plaintiff has only started and only one witness has been examined. The evidence of the defendant is yet to begin. In such view of the matter, in my opinion, there is no question of prejudice to the other side arises.

7. The Hon'ble Supreme Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Ors. 2009(10)SCC 84*** has 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 controversy. The other important condition which should govern the discretion of the Court is the potentialities of prejudice or injustice which is likely to be caused to her side. Ordinarily, if the other side is**

compensated by cost then there is no injustice.' In the present case, in the written statement, the defendants themselves raised the ground that they have obtained Basgit parcha in particular proceeding before C.O. On coming to this allegation made in the written statement, the amendment has been sought for by the plaintiff, therefore, for deciding this controversy between the parties regarding granting of Basgit parcha, the amendment sought for is necessary.

8. In view of my above discussion, I find that the Court below passed the order in the manner not permitted by law and thereby has refused to exercise jurisdiction vested in it by law and if order is allowed to stand, it will cause prejudice to the plaintiff petitioner.

9. Thus, the impugned order is set aside and this Civil Misc. application is allowed. Accordingly, the amendment application filed by the plaintiff for amendment of the plaint stands allowed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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