

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8499 of 2015

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1. Smt. Sarswati Devi Wife of Sri Suresh Prasad and Daughter of late Sahdeo Rai resident of Village Chakjan, P.S. Naubatpur, District Patna at present residing at Village Rampur, P.O. & P.S. Khagaul, District - Patna.
 2. Smt. Usha Singh wife of Sri Lakshman Singh resident of Mohalla Lekhanagar Cantt. Road, behind DAV School, P.O. & P.S. Danapur, District Patna.
 3. Smt. Niharika Sinha wife of Sri Akhileshwar Sharan Jamuar Resident of Mohalla Punaichak, P.O. Punaichak, P.S. Shastri Nagar, District Patna
 4. Smt. Nirmala Sinha wife of Sri Ravindra Kumar resident of Mohalla Chiraiyatard, Railway Quarter P.O. Chiraiyatard, P.S. Kotwali, District Patna.
 5. Smt. Shashikala wife of Baidehi Sharan Jamuar Resident of Mohalla Punaichak, P.O. Punaichak, P.S. Shastri Nagar, District Patna
 6. Sri Alok Kumar @ Ashok Kumar Son of Manu Prasad resident of village Ariawao, P.O. & P.S. Krishna Brahm District Buxar.

.... Petitioners

Versus

1. Sri Sheo Nandan Rai
2. Sri Ram Nandan Rai Both sons of late Nirpati Bhagat & Rampati Bhagat @ Rampati Gope
3. Mostt. Radhika Devi wife of late Brijnandan Rai
4. Sri Suraj Kumar son of late Brij Nandan Rai
5. Sri Rahul Kumar Minor son of late Brij Nandan Rai under guardianship of his mother Mostt. Radhika Devi who is his natrual guardian, next friend and well wisher all residents of village Rampur, P.O. & P.S. Khagaul, District Patna.
6. Sri Paras Nath Singh son of Rajaram Singh resident of village & P.O. Gamhar, District Gajipur (UP) at present residing at Mohalla Lekha Nagar, Cantt. Road behind D.A.V. School, P.O. Khagaul, P.S. Danapur, District Patna.
7. Sri Ram Chandra Rai
8. Sri Chandrika Prasad
9. Sri Satrudhan Prasad All sons of late Mahadeo Rai
10. Sri Krishna Prasad
11. Sri Shankar Prasad Both sons of late Saheshwar Rai All residents of village Rampur, P.O. & P.S. Khagaul, District Patna.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Kartik Kumar Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

5 25-04-2016

By the order dated 09.12.2014, the learned Additional Judge 3rd, Danapur in Title Suit No. 49 of 2010 has allowed the amendment application filed by the plaintiffs-respondents.

The learned counsel, Mr. Ratan Kuamr Sinha, relied upon various decisions of the Supreme Court such as **Brahmanand Choudhary Vs. Smt. Narayani Devi, 2015 (3) PLJR 448** and **Lal Babu Rai & Ors. Vs. Ramagaya Rai, 2014 (1) PLJR 48** and submitted that after commencement of trial, the learned Court below could not have allowed the amendment application.

On the other hand, learned counsel, Mr. Parthasarthy, for the respondent submitted that there is no question of prejudice to the petitioner arises. Particularly, when the defendant has yet to adduce evidence. Further according to learned counsel, the amendments sought is necessary for just decisions of the controversies between the parties and therefore, the learned Court below has rightly allowed the amendment application.

The Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009) 10 SCC 84** has held that the Courts



have very wide discretion in the matter of amendment of pleadings while deciding applications for amendments, the Courts must not refuse *bonafide*, legitimate, honest and necessary amendments and should never permit *malafide*, worthless and/or dishonest amendments. 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. If that condition is not satisfied, the amendment cannot be allowed. The other important condition which should be satisfied the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice. In the present case, the Court below has granted costs while allowing the amendment application filed by the plaintiffs-respondents.

In another decision the Hon'ble Supreme Court in the case of **Rajkumar Gurawara Vs. S.K. Sarwagi and Company Private Limited and another, (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 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 of the Code of Civil Procedure.

In the present case, while allowing the amendment application, the Court below granted the liberty to the petitioners to file additional written statement. The defendants have also filed additional written statement as has been submitted by the learned counsel for the respondents and still today the evidence of the plaintiffs is only going on. Therefore, there is no question of prejudice to the petitioners arises. So far the decisions relied upon by the learned counsel for the petitioners are concerned, it may be simply stated that the facts of this case are entirely different and therefore worthless to consider the principles laid down in those cases. Thus, this writ application is devoid of merit and accordingly dismissed.

(Mungeshwar Sahoo, J)

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