

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10635 of 2015

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Md. Jabbar

.... Petitioner/s

Versus

Md. Annu Mistri

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjay Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 26-10-2016 Heard the learned counsel for the petitioner and the

learned counsel for the respondent.

Perused the impugned order dated 01.07.2015 passed
by learned Munsif I, Munger in Eviction Suit No.3 of 2005
whereby the learned Court below rejected the amendment
application filed by the plaintiff-petitioner.

It appears that the plaintiff-petitioner filed the aforesaid
eviction suit for eviction of the tenant-respondent from one shop
premises which is in occupation of the defendant-respondent. At
paragraph 2, it was pleaded that the suit premises is the property of
Muslim Committee, Tarapur of which the plaintiff is the Secretary
and Manager. Now, by way of amendment, the plaintiff is seeking
the amendment to the effect that the suit premises including 11
shop khatahs with some parti land belonged to the property of
Muslim Committee. Likewise, in the description of the party i.e.



the plaintiff, the details of the plaintiff Md. Jabbar being a Secretary and Manager of Muslim Committee, Tarapur is sought to be amended. In the same manner, in the schedule of the property, the plaintiff by way of amendment sought to give the details of the boundary of the suit premises. The Court below rejected the amendment application on the ground of delay i.e. at the time of argument of the eviction suit, this amendment has been sought for by the plaintiff and the proviso to Order VI Rule 17 C.P.C. prohibits allowing amendment at the stage of final argument.

The learned counsel, Mr. Abbas Haider for the plaintiff-petitioner submitted that the amendment sought for are formal in nature and are necessary for just decision of the controversy between the parties and that it will not prejudice the defendant-respondent because there is mis-description of the plaintiff in the cause title and at paragraph 2, clearly it is mentioned that the plaintiff is the Secretary and Manager which is now sought to be added in the cause title. Secondly, the suit property in the schedule is not changed rather more specifically now by way of amendment, the suit property is described. Likewise, in paragraph 2, the property of the Muslim Committee was described as only one shop which is tenanted to the defendant-respondent and now



by way of amendment, in addition to that one shop, the plaintiff sought to introduce another 11 shop premises belonging to the Muslim Committee. In such circumstances, the Court below has wrongly rejected the application without considering that the amendment sought for are formal in nature and are necessary for determination of the controversies between the parties and that it cause no prejudice to the defendant.

On the other hand, the learned counsel, Mr. Harshwardhan Sahay for the respondent submitted that at the time of hearing of argument of the eviction suit, no amendment could have been allowed by the Court below in view of proviso to Order VI Rule 17 C.P.C. In support of his submission, the learned counsel relied upon decision of the Supreme Court 2012(1) PLJR 412.

It may be mentioned here that so far the decision relied upon by the learned counsel for the respondent is concerned, the Supreme Court has defined what is mistake and what is willful omission. In that decision also, the Supreme Court has held that the primary aim of the Court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the Court so that the Court has to assess all the relevant information in coming to its



decision. Therefore, at time it is required to permit parties to amend their pleadings. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties.

In the present case at our hand, Court below has not rejected the amendment application because by way of amendment new facts are sought to be brought on record which are prejudicial to the defendant nor the Court below rejected the amendment application on the ground that the amendment sought for are not necessary for determination of real questions in controversy between the parties. From perusal of the amendment application, it appears that the amendment sought for are simple, formal and are not new facts. There is mis-description of the plaintiff's address which is sought to be corrected. The admitted case is that the defendant is sought to be evicted from one shop premises which belonged to the Muslim Committee. Now, the plaintiff is seeking addition of the other property of Muslim Committee and the defendant is not related with those properties and in the schedule, only specific description giving boundary is sought to be amended.

In my opinion, therefore, the learned Court below has wrongly refused to exercise a jurisdiction vested in it by law.

In the result, this writ application is allowed. The impugned order dated 01.07.2015 passed by Munsif I, Munger in Eviction Suit No.3 of 2005 is hereby set aside. The amendment application filed by the plaintiff-petitioner is thus, allowed.

(Mungeshwar Sahoo, J)

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