

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7596 of 2013

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1. SMT. KANTI DEVI, WIFE OF SRI NARAIN SHANKAR DWIBEDI, RESIDENT OF JANTA ROAD, GAUTAM NAGAR, NEAR NAVRANGI SCHOOL, P.S. GARDANIBAGH, TOWN AND DISTRICT - PATNA

2. SRI NARAIN SHANKAR DWIBEDI, SON OF LATE MANGAL DUBEY, RESIDENT OF JANTA ROAD, GAUTAM NAGAR, NEAR NAVRANGI SCHOOL, P.S. GARDANIBAGH, TOWN AND DISTRICT - PATNA

.... PETITIONER/S

VERSUS

1. SRI TEJ NARAIN DUBEY, SON OF NARSINGH DUBEY, RESIDENT OF PATANPURA, P.S. GAURICHAK, DISTRICT - PATNA, AT PRESENT RESIDENT OF DUBEY NIWAS, NEW YARPUR ROAD, P.S. GARDANIBAGH, DISTRICT - PATNA

.... RESPONDENT/S

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Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma-Advocate
 For the Respondent/s : Mr. Pankaj-Advocate
 Mr. Rajesh Kumar Dubey-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 17-03-2016 Heard learend counsel for the petitioners as well as
 learned counsel for the respondent.

Certain events are admitted one which, before going to test the legality of the order impugned, has to be incorporated. Respondent-plaintiff is the purchaser of 03 katthas of land of Khesra No.2201. It is admitted one that 01 kattha 10 dhoors of land from Western Side measuring 58'-6", towards Eastern Side 56', towards Western Side 35'-8" towards Northern Side and 35'-8" towards Southern Side has been sold to the petitioners/defendants.

The plea of the respondent-plaintiff happens to be that after dismantling the boundary wall, petitioners/ defendants

had encroached over remaining part of land and further, by way of an amendment also brought up having a construction at the end of the petitioners-defendants and accordingly, amended reliefs also.

Petitioners-defendants filed written statement as well as additional written statement. It has been admitted at the end of the petitioners-defendants regarding purchase to the extent of 01 kattha, 10 dhoors from the respondent-plaintiff. It has further been pleaded that certain portion of the remaining land possessed by the respondent-plaintiff is being used by the public as a road in the breadth of 10 feet which, extended up to 20 feet and further, considering the aforesaid eventualities, respondent-plaintiff indulged in negotiation with the petitioners-defendants over sale of remaining area comprising 750 square feet which materialized over consideration amount of Rs.65,000/- which, the petitioners-defendants had already paid in presence of witnesses and then thereafter, the respondent-plaintiff developed dishonest intention to digest the money denying to execute sale deed whereupon, a suit for Specific Performance of Contract Act has been launched at his end.

From the order impugned, it is evident that in the aforesaid suit relating to Specific Performance of Contract Act, wherein petitioners-defendants happen to be plaintiffs, also

ascertained the area of the land to be 750 square feet.

It has been submitted on behalf of petitioners that rejection of a prayer made on behalf of petitioners-defendants to correct the figure 750 square feet as 950 square feet by way of an amendment is simply an arithmetical error without adversely affecting the case of the either of the party, therefore, the order impugned is fit to be set aside whereby prayer for amendment has been refused.

To substantiate such plea, it has also been submitted that amendment relating to plaint and amendment relating to written statement happens to be at two different footing. Plaintiff is to substantiate its case. It is the plaintiff, who either wins or loses the battle and not the defendants, unless and until there happens to be counter-claim. Any kind of assertion, in any form of pleading under written statement in order to controvert the assertion of the plaintiff is permissible, because of the fact that by such assertion, the nature of the suit is not going to be changed. Nature of the suit is to be governed by the recitals of the plaint, the relief so sought for by the plaintiff. To substantiate such plea, learned counsel for the petitioners relied upon *A.I.R. 2007 SC 1663*. Furthermore, it has been submitted that even having correction of the error of digit under the written statement instead



of 750 square feet into 950 square feet is not going to change the nature of the pleading as has been advanced at the end of the plaintiff nor it is going to jeopardize his interest in the background of admitted position that petitioners-defendants had encroached over his land, so brought up at the end of the plaintiff by way of an amendment without divulging the actual area. Therefore, the area whatever been disclosed at his end at best could be considered as an area in his possession. Apart from this, it has also been submitted that during course of consideration of amendment, the merit of the case should not be taken into consideration and to substantiate the same, the learned counsel for the petitioners also relied upon *(2006)4 SCC 385*.

So, submitted that the rejection of the prayer made on behalf of petitioners to the extent of correction of digital error by the learned lower Court is found in contravention of settled principle of law.

The learned counsel for the respondent opposed the prayer.

It is needless to say that amendment relating to plaint as well as written statement could not be found at same pedestal. The learned counsel for the petitioners is right in his submission that it is the plaintiff, who has to erect the structure. The job of



defendants happens to take proper recourse in order to dismantle the structure erected by the plaintiff that means to say, it is the plaintiff, who has to frame the suit and suit having once framed basically, could not be allowed to change. However, no such barrier is found available against the defendants. Therefore, there happens to be no confusion over the settled principle of law that amendment with regard to plaint as well as written statement should not find analogical.

Each case has got its own merit. The facts of present case need more in depth consideration while calipers the prayer of the petitioners. From Para-13 of the written statement, it has been asserted in following way:-

“13. That in course of time as the plaintiff apprehended that his entire land will be used by the public or otherwise so he contacted defendant no.1 in October 2005 that as you are in possession and have made some construction on a part of the rest vacant land measuring 750 Sq.ft. and can save the same, so if you pay Rs.65,000/- then he will sell the same. The defendants agreed for the same in order to avoid complication and paid the entire amount on 27.10.2005 without any paper transaction in good faith and as both were having good

relations. The plaintiff received the money in presence of few persons namely Jay Prakash Singh and Pramod Kumar Sharma and assured that he will execute the registered deed of sale after Chattpuja.”

That means to say, the petitioners have admitted their presence over the remaining part of the land belonging to the plaintiff. In the aforesaid background as well as taking into account his further assertion that certain area of the land belonging to the plaintiff covering 10 feet breadth is being used by the public for ingress or egress and further, for the remaining area, seeing the aforesaid misfortune, compromising 750 sq. ft. there was negotiation which, having been finalized over Rs.65,000/-, payment was made and as, the plaintiff failed to execute the sale deed, suit for Specific Performance of Contract Act has been filed. From the order impugned, it is apparent that in the aforesaid suit wherein defendants stood as the plaintiff, an area covering 750 sq. ft. has been disclosed to be the area of the land.

Had there been independent suit, the prayer having at the end of the petitioners-defendants treating it to be simply an arithmetical error would have been allowed, but if allowed at the present moment, would have its repercussion in another suit wherein petitioners-defendants happen to be plaintiffs and

plaintiff-respondent of this case happens to be defendant. Not only this, in terms of Para-13 having his presence over the land much before the negotiation is another circumstance which, if allowed, will amount to acknowledge the illegal act of the petitioners-defendants. That being so, the principles as canvassed at the end of the learned counsel for the petitioners as referred above is not at all found applicable in the facts and circumstances of the present case.

Consequent thereupon, the instant petition is found devoid of merit and is accordingly, rejected.

However, this order will not cause prejudice while considering the prayer of the petitioners in another suit, independently.

(Aditya Kumar Trivedi, J)

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