

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16271 of 2015

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Raj Kumari Devi & Ors

.... Petitioner/s

Versus

Sanjay Kumar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 08-02-2016

Heard learned counsel Mr. Manoj Kumar Jha for the
petitioners.

This application under Article 227 of the Constitution
of India has been filed by the petitioners for setting aside the order
dated 16.07.2015, whereby the Court below has allowed the
amendment application filed by the plaintiffs- respondents.

The learned counsel for the defendants-petitioners
submitted that the case of both the parties were closed and even
arguments have already been completed and at the stage of
judgment, this amendment application was filed by the plaintiffs-
respondents for amendment in the schedule of plaint and sought to
add more properties movable and immovable as described in detail
in the amendment application. The Court below without
considering the proviso to Order 6 Rule 17 C.P.C. allowed the
amendment application on payment of cost of Rs. 5,000/-.



The learned counsel further submitted that this Court in the case of *Brahmanand Choudhary & Ors Vrs. Smt. Narayani Devi & Anr. 2015 (3) PLJR 448* has held that “no amendment application shall be entertained after commencement of trial unless the court comes to conclusion that despite due diligence the party could not have raised the matter before the commencement of trial”. According to the learned counsel in the present case a vague description of the property has been given in the amendment application and earlier also amendment application filed by the plaintiffs was allowed but the plaintiffs did not pray for amendment for adding these properties.

Perused the order passed by the Court below. Perused the amendment application and the rejoinder filed by the petitioners. It appears that so far the case made out in the amendment application is to the effect that in spite of repeated request the defendants were not ready to show the deposits standing in their name in different bank and then he subsequently learnt these deposits and further with regard to the immovable property, it is stated that the properties situated in Mouza-Sultanpur Raspur-Patasiya of District-Samastipur is the joint family property which was allotted to the share of late father of plaintiffs and the defendants.

From perusal of the rejoinder, it appears that there is no denial to this fact made in the amendment application. It further appears that the defendants did not dispute either about identity of the land or about the allegation that these properties are joint family properties.

The Hon'ble Supreme Court in the case of *Revajeetu Builders and Developers Vrs. Narayanaswamy and Sons and Others (2009) 10 SCC 84* has held that "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. This is the basic test which should govern the Court discretion in grant or refusal of amendment. The other important condition which should govern 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 but in practice hardly any Court grants actual costs to the opposite side."

In the present case, so far the question of proviso to Order 6 Rule 17 is concerned, it may be mentioned here that the plaintiffs are not introducing a new fact so as to prejudice the

other side. The plaintiffs prayed that the joint family property described in the amendment application be added in the schedule of the plaint. It is not the case of the defendant in the rejoinder that the properties are not the joint family property.

So far the argument of the learned counsel that the plaintiffs have not described the details of the immovable properties is concerned; it is the matter that can be decided by the Court finally. As it is settled principles of law that at the time of consideration of the amendment application, the Court is not required to decide the application on merit. In this matter reference may be made to the decision of the Supreme Court (2008) 17 SCC 671 *Lakha Ram Sharma Vrs. Balar Marketing Private Limited*. The Hon'ble Supreme Court has held that "Entering into merits and testing bona fides, held, is a question to be decided at the trial and not at the stage of allowing/refusing amendment. The another decision of the Supreme Court is in the case of *Rajesh Kumar Agrawal Vrs. K.K. Modi* (2006) 4 SCC 385.

Now, therefore, in the present case at this stage whether the amendment would have been allowed or not because of non-description of immovable property or movable property cannot be considered as it relates to the merit of the amendment application and that too in the present case as stated above no

where the defendant denied that these properties are not the joint family properties.

So far the decision relied upon by the learned counsel for the petitioners is concerned, it may be mentioned here that none of the above decisions of the Supreme Court have been considered.

In view of the above facts and circumstances of the case, the learned Court below has rightly allowed the amendment application. Therefore, it needs no interference in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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