

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19016 of 2015

=====

Shanjhari Devi & Ors

.... Petitioner/s

Versus

Siya Ram Sah & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bijay Kumar Pandey

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 30-06-2016

Heard the learned counsel, Mr. Bijay Kumar Pandey for the petitioners and the learned counsel, Mr. Anish Kumar for the respondents.

Perused the order passed by the Court below dated 07.08.2015. It appears that amendment application was filed by the petitioners for amendment in the boundary of the disputed land described in Schedule I. In the boundary, in the eastern side, plaintiff has been mentioned. According to the petitioner, it is mistake which was written by hand and in place of Md. Yunus and others, wrongly it has been mentioned as plaintiff. The learned counsel submitted that so far the khata number, plot number and area is concerned, no change is made by the amendment. Only in the boundary, there is a mistake but the court below has rejected the application for amendment on the ground that the suit is at the stage of argument.

On the other hand, the learned counsel for the respondents submitted that he will have no chance to rebut the case of the plaintiff.

So far the submission of the learned counsel for the respondents is concerned, it may be mentioned that neither the plaintiff is bringing any new fact in the body of the plaint nor he is changing the suit plot but the prayer has been made only with respect to the boundary of the suit land that too in the eastern side. Therefore, by the amendment, the plaintiff is trying to give the correct boundary of the disputed plot so that in future, there may not be any difficulty to identify the suit land.

The Hon'ble Supreme Court in the case of **Peethani Suryanarayana and another v. Repaka Venkata Ramana Kishore and others, (2009) 11 Supreme Court Cases 308** in the like facts and circumstances has allowed the amendment even after passing the final decree saying that the identity of the suit land has not been changed. One land is not being substituted by another land. Therefore, when the plaintiff is supplying the correct boundary, there is no question of prejudice to any party arises.

It is well settled principles of law that if no prejudice is caused to the other side then the amendment can be allowed at any stage provided no new fact is being brought and no prejudice is

caused to the other side.

Therefore, in my opinion, in view of the settled proposition of law laid down by the Supreme Court and in view of the present facts and circumstances of the case, the Court below has wrongly refused to exercise a jurisdiction vested in it by law.

Thus, this writ application is allowed. The impugned order dated 07.08.2015 passed by Sub Judge IV, Muzaffarpur in Title Suit No.566 of 2004 is set aside and the plaintiff-petitioner's application for amendment, which is in the nature of correction only, is allowed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--