

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15400 of 2012

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1. Ram Babu Singh Son Of Late Ramchandra Singh Resident Of Village: Ibrahimpur, P.O. & P.S.: Paharpur, District: East Champaran
 2. Bindu Singh Wife Of Sri Birendra Singh Resident Of Village: Kotawa, P.O. & P.S.: Kotawa, District: East Champaran

.... Petitioner/s

Versus

1. B.R.A. Bihar University, At & P.O.: Muzaffarpur, P.S.: Muzaffarpur, District: Muzaffarpur, Through Its Registrar
 2. Munshi Singh College, At & P.O. Motihari, P.S. Motihari, District: East Champaran Through Its Principal
 3. Tugneshwar Nath Kodia Son Of Late Kedar Kedia Resident Of Hospital Road, Mohalla: Belbanawa, P.O. & P.S.: Motihari Town, District: East Champaran
 4. Dilip Kr. Kedia Son Of Bhola Nath Kedia Resident Of Hospital Road, Mohalla: Belbanawa, P.O. & P.S.: Motihari Town, District: East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Singh -Advocate

For the Respondent/s : Mr. Harendra Kumar Tiwary -Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

8 17-05-2016 Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. Petitioners/defendants are aggrieved by an order dated 21.05.2012 passed by Sub-Judge, 3rd Motihari, East Champaran in Title Suit No. 338/2004 whereby and whereunder proposed amendment sought for on behalf of respondents/plaintiffs has been allowed.

3. Gone through the order impugned in consonance with the submissions raised on behalf of respective learned counsels.



4. It has been submitted on behalf of petitioners that erasing certain facts which have been pleaded under para-3 of the plaint by way of proposed amendment, the whole scenario having been flashed at the end of respondents/plaintiffs is going to change and on account thereof, factual aspects which have been pleaded subsequently in the background of disclosure having been made under para-3 of the plaint, and further, the subsequent amendment so sought for at different paragraphs of the plaint, will certainly change the event and on account thereof, the same should not have been allowed by the learned lower court. That being so, the order impugned is fit to be set aside.

5. On the other hand, learned counsel for the respondents/plaintiffs has submitted that by deleting the relevant portion of para-3 in consonance with other amendments so sought for is not going to change the nature of the suit, the relief so sought for and on account thereof, the order impugned should not be interfered with. Furthermore, it has also been submitted on behalf of respondents/plaintiffs that the issue has been framed and the witnesses are yet to be produced, therefore, by such amendment, the petitioners/defendants are not going to face any sort of prejudice as the proposed amendment have not fallen by surprise. Apart from this, petitioner/defendant will be in a

position to rebut the same. Therefore, amendments have rightly been allowed.

6. From the order impugned, it is evident that the issue has already been framed and witnesses are yet to be produced at the end of respondents/plaintiffs.

7. In the case of ***Rajkumar Gurawara (Dead) through LRS v. S.K. Sarwagi & Company Pvt. Ltd & Anr*** as reported in (2008) 14 SCC 364, it has been held that pre-trial amendments are to be allowed liberally than those which are sought to be made after commencement of the trial. In the same volume at page 632 (***South Konkan Distilleries v. Prabhakar Gajanan Nai***), it has been held that if the amendment is going to change the nature of the suit, then in that event, it should not be allowed.

8. Recently, the aforesaid event has been considered in detail in ***Ram Niranjana Kajaria v. Jugal Kishore Kajaria with Jugal Kishore Kajaria v. Sheo Prakash Kajaria*** as reported in (2015) 10 SCC 203, taking into account the criteria so fixed in the case of ***Revajetu Builders & Developers v. Narayanswamy and Sons*** reported in (2009) 10 SCC 84 wherein ***Gautam Sarup v. Leela Jaitly*** reported in (2008) 7 SCC 85 has been considered and reiterated under para-20 thereof, which is quoted hereinbelow:-

“20. On amendments generally, in the decision reported in *Revajeetu Builders and Developers v. Narayanaswamy and Sons* [(2009) 10 SCC 84], after referring to *Gautam Sarup* [(2008) 7 SCC 85], the principles on amendment have been summarized at Paragraph-63. It has been held as follows:

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

9. Now the proposed amendment so allowed at the end of learned lower court is to be seen in the background of the criteria so laid down by the Hon’ble Apex Court as referred above.

10. From para-3 of the plaint as stood before amendment (Annexure-1), it is evident that plaintiff had pleaded

in the following manner which is quoted below:-

“That plaintiff no.2 got the possession of the lands described in schedule 1 of the plait from late Hardeo Narayan, Advocate, Motihari, President of the New Motihari Club. In July 1946 premises of New Motihari Club was leased out by one Kedar nath Kedia by a registered deed of lease dated 1st July 1946 in favour of Babu Janaki Pd. Sinha Sub Judge, who was at that time president of New Motihari Club. The lease was for 30 years. The terms and conditions of the lease are set out in the deed of lease and the lesser was the life member of the club under item no.8. After his demise eldest member of his family was a life member. The premises was not to be used for any other purpose other than the Club. If the Club at any time within the prescribed period of lease ceases to function the lessor or his successor shall have a right to terminate the lease after giving three months notice in writing and the authorities of the club will return the land with all building structures thereon. The leasee shall be entitled to compensation for building and other structures situated over the leased premises”.

11. After three lines of para-3, the proposed amendment as sought for and so allowed by the order impugned speaks regarding erasing of subsequent details. If the subsequent details is going to be allowed, then in that event, possession having been acquired by the plaintiff no.2 by late Hardeo Narayan, Advocate, Motihari is found unexplained. Furthermore, as is evident from para-9, Kedar Nath Kedia who has leased out the premises to New Motihari Club has been found duly identified as owner of the land.

12. In the aforesaid facts and circumstances of the case,

the proposed amendment, if allowed, and having its impact over subsequent amendment so prayed for speaks the event which is going to make the pleadings more clumsy more particularly questioning identity of Kedar Nath Kedia who has been identified as owner. Furthermore, by erasing the relevant portion of para-3 of the plaint, the event which took place in between is found, going to be out of consideration and on account thereof, any right having been accrued in the aforesaid background in favour of the defendant, will be wiped out. Apart from this, Clause-1 of the aforesaid parameters so laid down by the Hon'ble Apex Court as referred above that amendment sought is imperative for proper and effective adjudication of the case is not at all found duly substantiated.

13. That being so, the order impugned is set aside.
Petition is allowed.

(Aditya Kumar Trivedi, J)

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