

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21235 of 2012

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1. Tapashi Baitha S/O Late Kali Charan Baitha
 2. Ganesh Baitha S/O, Late Bhola Baitha, both R/O Vill.- Utari Noinya (Danghi Tola), Darmaha Tola- Katahariya, P.S.- Keshariya, Distt.- E. Champaran

.... Petitioner/s

Versus

1. Tulishi Baitha S/O Late Bhola Bhaita R/O Utari Noinya (Danghi Tola), P.S.- Paharpur, Distt.- E. Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhannjay Kumar No. 2, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 12-01-2016 Heard learned counsel for the petitioners as well as learned counsel for the respondent.

2. Petitioners are the defendants. After filing of WS, a prayer has been made on behalf of petitioners/defendants on 26.07.2011 wherein certain corrections have been sought for under para-12 at different lines while at the last of para-12, a prayer has been made to incorporate, “it happens to be a false assertion at the end of plaintiff that house, *Nadh, Khuta of plaintiff lies over the disputed land*, over which an objection was filed by the respondent/plaintiff on 22.09.2011 and after hearing the parties, the learned lower court had rejected the prayer vide order dated 14.08.2012, the order impugned relating to Title Suit No. 103/2004 pending before Munsif Sadar, Motihari.



3. Although petitioners/defendants was not required to plead like so because of the fact that in para-12 of the WS there happens to be specific disclosure that the plaintiff is not at all over the land under dispute, even then the proposed amendment, in the aforesaid factual aspect is not going to change the basic character of the WS. The learned lower court had, while rejecting the prayer, misconstrued that there happens to be admission on the part of defendant.

4. In *Ram Niranjana Kajaria (in 7213-7214), Jugal Kishore Kajaria (in 7215) v. Sheo Prakash Kajaria & Ors.* as reported in *2015(4) PLJR (SC) 291*, the Hon'ble Apex Court has reiterated the principle laid down in *Ravajeetu Builders and Developers v. Narayanswamy and Sons and Others* reported in *(2009)10 SCC 84* and incorporated the same under para-21 which is as follows:-

“21. On amendments generally, in the decision reported in *Ravajeetu Builders and Developers v. Narayanswamy and Sons and Others* reported in *(2009)10 SCC 84*, after referring to *Gautam Sarup (supra)*, 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;

- W F

NO
- (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.”

5. From perusal of the order inconsonance with the prayer so made, it is apparent that the finding recorded by the learned lower court is not at all found substantiated.

6. That being so, the order impugned is set aside.
Petition is allowed subject to cost of Rs. 200/-.

(Aditya Kumar Trivedi, J)

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