

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22231 of 2012

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Smt. Shail Bala Singh @ Shail Bala, wife of Sri Kumar Anand Ballabh Singh, resident of Mohalla Shivpuri Anishabad, P.O. Anishabad, P.S. Gardanibagh, District-Patna.

.... Defendant/ Petitioner

Versus

Sri Raghu Nandan Pd. Sinha, son of Late Kishun Singh, resident of village-Khiri Chak, P.S. Asthama, District-Nalanda, at present Mohalla Shivpuri, Anishabad, P.S. Gardanibagh, District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dwivedi-Sr. Advocate Mr. Kuber Pathak-Advocate Dr. Anshuman-Advocate
For the Respondent/s	:	Mr. Kaushal Kumar-Advocate Mr. Raj Kishor Prasad-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 16-05-2016

Heard learned counsel for the petitioner as well as learned counsel for the respondent.

2. Petitioner is the defendant. On account of refusal of amendment of the written statement in terms of Order-VI, Rule-17 of the C.P.C. read with Section 151 of the C.P.C. by the learned Subordinate Judge-VI, Patna in Title Suit No.560 of 2011 vide order dated 05.11.2012, petitioner has preferred instant petition.

3. Initially, after appearance of petitioner/ defendant written statement was filed (Annexure-2) wherein at Para-9, there happens to be plea of oral exchange. In the said Para, retaining the factual aspect as pleaded since before an alternative plea has been sought for, introduced by an amendment disclosing that

Rs.4,000/- was paid to the vendor of the plaintiff, who allowed her for her presence over the aforesaid area of land whereupon she had constructed the house.

4. The status of defendant in getting his written statement amended and that too, to what extent is found properly answered in ***Usha Balashaheb Swami and others v. Kiran Appaso Swami and others reported in (2007) 5 SCC 602***, it has been held:-

“19. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.



“20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see B.K. Narayana Pillai v. Parameswaran Pillai (2000(1) SCC 712) and Baldev Singh & Ors. v. Manohar Singh (2006 (6) SCC 498)]. Even the decision relied on by the plaintiff in Modi Spinning ((1976)4 SCC 320, clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead) [1995 Supp (3) SCC 179]. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written

statement, this Court observed in Basavan Jaggu Dhobi's case (1995 Supp (3) SCC 179 as follows :-(SCC p. 180, para 3)

"3. As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law. It is open to a defendant to take even contrary stands or contradictory stands, thereby the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

5. Learned counsel for the respondent opposed the prayer and submitted that aforesaid theme was not at all taken up at the end of the petitioner/ defendant during course of litigation under Section 144 Cr.P.C. Furthermore, it has also been submitted that by way of such amendment, petitioner intends to introduce a new story in consistent with whatever been pleaded at an earlier occasion. Therefore, the order impugned is fit to be confirmed.

6. Considering the principle laid down by the

Hon’ble Apex Court, as discussed above, the prayer so made on behalf of petitioner comes within the purview thereof and on account thereof, same is allowed.

7. Consequent thereupon, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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