

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18668 of 2015

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Sunita Devi

.... Petitioner/s

Versus

Smt. Lilawati Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Meeta Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 29-06-2016

Heard the learned counsel, Ms. Meeta Sinha for the petitioner and the learned counsel, Mr. Vishal Saurabh for the respondent.

From perusal of the impugned order, it appears that the plaintiff filed the amendment application seeking to amend the plaint by introducing new facts and also for addition of further relief in the plaint. From perusal of the amendment application, it appears that the plaintiff by way of amendment is trying to get the plaint amended by introducing entirely new facts. If at this stage, this amendment is allowed then naturally the appellant will be greatly prejudiced because the appellant will have a right to file additional written statement and if additional written statement is filed then the facts are to be investigated on the basis of evidences. It will therefore, lead to multiplicity of proceeding.

So far addition of new relief is concerned, admittedly, the



suit has been decreed in favour of the plaintiff-respondent-petitioner. Now, relief is being sought to deliver possession of the suit property in favour of the plaintiff. Admittedly, the defendant has filed the appeal against the judgment and decree whereby the plaintiff's suit for declaration of the sale deed in favour of the defendant-appellant-respondent has been allowed. Now, therefore, if the appeal will be allowed then naturally the plaintiff's suit will be dismissed irrespective of the fact of any relief originally claimed or introduced by way of amendment.

In my opinion, therefore, if the relief is added, as sought for by the plaintiff, it will neither cause prejudice to the petitioner nor it will affect in any way the rights of the parties. The Court below, therefore, so far this relief is concerned, has wrongly rejected the amendment application.

In such view of the matter, in my opinion, the Court below has refused to exercise a jurisdiction vested in it by law. If that part of the order whereby the amendment seeking to add a new relief has been rejected is allowed to stand then naturally it will prejudice the petitioner and also it will lead to multiplicity of proceeding which will be great hardship for the petitioner.

On the other hand, no prejudice will be caused to the defendant-appellant.

In the result, this writ application is allowed in part and the amendment application filed by the plaintiff-respondent-petitioner whereby only prayer has been sought to be added i.e. Item No.IV of the proposed amendment of amendment application is allowed. The impugned order is set aside to that part only.

So far other portion of the amendment application is hereby rejected. That part of the order is hereby confirmed.

(Mungeshwar Sahoo, J)

Saurabh/-

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