

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1259 of 2016

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1. Bharat Prasad, Son of Late Satya Narain Prasad resident of Sitamarhi Town, Ward No. 15, Police Station and District Sitamarhi.

.... Petitioner/s

Versus

1. Most. Pana Devi, wife of ate Saryug Prasad Gupta
2. Ram Nath Prasad Gupta
3. Ram Pravesh Gupta Both sons of Late Saryug Prasad Gupta (not known as not disclosed in plaint) resident of Sitamarhi Town, Ward No. 15, P.S. & District- Sitamarhi.
4. Amiri Pd. Gupta, Son of Late Laxmi Sah, resident of Talkhapur Dumra, P.S. Dumra, District- Sitamarhi.
5. Bishwa Nath Prasad Gupta, Son of Late Mahabir Sah resident of Vill- Sitamarhi Town, Ward No. 15, P.S. & District- Sitamarhi.
6. Anand Kumar @ Raghunath Prasad Gupta, Son of Late Laxmi Sah,
7. Rama Shankar Pd. Gupta
8. Hari Shankar Pd. Gupta
9. Uma Shankar Pd. Gupta
10. Raj Kumar Gupta All sons of Late Deo Narain Sah
11. Anandi Devi W/o Late Deo Narain Sah
12. Ram Swarup Sah, S/o Late Ramautar Sah
13. Ram Prit Sah, Son of Late Raghubir Sah All residents of Village- Talkhapur Dumra, Police Station- Dumra, District- Sitamarhi.
14. Satrugan Prasad
15. Laxman Prasad Both sons of Late Satya Narain Prasad, resident of Sitamarhi Town, Ward No. 15, Police Station + District- Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S. Diwedi, Sr. Advocate
: Mr. Atul Kumar Pandey
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 12-02-2016

Heard learned counsel for the petitioner.

By the impugned order dated 27.10.2015, the court below allowed the amendment application filed by the plaintiff on the ground that no prejudice is being caused to the other side i.e.

the petitioner.

Admittedly, the plaintiff's evidence has not yet been closed. In other words, the evidence has not yet been started. From perusal of the amendment application, which has been annexed as annexure to this writ application, it appears that the amendment is sought for with respect to making some corrections in the plot numbers or area of the land in the body and also in the schedule and further relief has been sought for by way of amendment. The court below has allowed the said amendment.

The grievance of the petitioner is that by way of amendment, the plaint is being overhauled and the earlier amendments made are being, now, again sought to be changed and further after commencement of trial, according to proviso to Order 6 Rule 17, amendment could not have been allowed. Further grievance is that the court below has passed a cryptic order without assigning any reason.

Admittedly, the defendants have not yet started evidence. The Hon'ble Supreme Court in the case of ***Raj Kumar Gurawar (dead) through LRs. Vs. S.K. Sarwagi and Company Pvt. Ltd.*** reported in (2008) 14 SCC 364 has held that a pre trial amendment can be allowed liberally as the opposite party would not be prejudiced because he will have an opportunity of meeting



the amendment sought to be made. However, in case of amendment after the commencement of trial, particularly, after the completion of the evidence, the question of prejudice to the other party arises and in such an event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso to Order 6 Rule 17 C.P.C.

It is settled principle of law that the primary aim of the Court is to try the case on its merit and ensure that the role of justice prevails. For this, the need for the true facts of the case to be placed before the Court so that the Court has assessed all the relevant information in coming to its decision. Therefore, at times, it is required to permit the parties to amend their pleadings. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions; firstly, no injustice must be done to the other side and; secondly, the amendment must be necessary for the parties for determining the real questions in controversy between the parties. Reference may be made to the decision of the Supreme Court in the case of *J. Samuel Vs. Gattu Mahesh* reported in *2012 (1) PLJR 412 SC*. From perusal of the impugned order, it appears that the court below has found that the amendments sought for are very formal in nature and no prejudice is being caused to the petitioner, therefore, in my opinion, no case

for interference in supervisory jurisdiction is made out. Thus, this writ application is dismissed.

However, the petitioner is at liberty to file additional written statement in rebuttal of the amended portion only.

(Mungeshwar Sahoo, J.)

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