

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7373 of 2015

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Chandrika Singh

.... Petitioner/s

Versus

Ram Pukar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamlesh Kumar Sharma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 11-04-2016

Heard learned counsel Mr. Kundan Bahadur Singh for the petitioner and learned counsel Mr. Shashi Bhushan Prasad for the respondents.

2. The learned Subordinate Judge-IV, Patna in Title Suit No.451 of 2003 rejected the amendment application filed by the plaintiff-petitioner under Order 6 Rule 17 of the Code of Civil Procedure by order dated 21.03.2015.

3. It appears that the plaintiff-petitioner filed the aforesaid suit praying for declaration of title and non-title of the defendants and further registered sale deed dated 14.02.1970 said to have been executed by Ram Palak Singh in favour of Ram Pukar Singh is without any title, null and void and the deed of gift on which the alleged sale deed based was also null and void and without any title. The plaintiff also prayed for injunction.

4. At the time of argument of the suit the application

for amendment was filed by the plaintiff-petitioner seeking the relief for confirmation of possession and/ in alternative of recovery of possession.

5. The court below by the impugned order considering the proviso to Order 6 Rule 17 of the Code of Civil Procedure rejected the amendment application.

6. Learned counsel Mr. Kundan Bahadur Singh for the petitioner submitted that the court below did not consider the fact that the plaintiff is not introducing any new fact nor he is praying for adducing any evidence. The plaintiff is only praying for further relief in the suit i.e. for confirmation of possession or in the alternative for recovery of possession. According to the learned counsel, the plaintiff has filed the amendment application only to avoid any technical objection. In the facts and circumstances of the case, proviso to Order 6 Rule 17 of the Code of Civil Procedure is not applicable.

7. On the other hand, the learned counsel for the respondents relied on the decision of the Supreme Court in the case of **Union of India Vs. Ibrahim Uddin & Anr., 2013 (1) PLJR 48 SC** and submitted that the suit where declaration of title of ownership has only been claimed without claiming possession is hit by the proviso of Section 34 of the Specific Relief Act. The

learned counsel further submitted that the relief claimed by way of amendment is also barred under Order 2 Rule 2 of the Code of Civil Procedure.

8. Section 34 of the Specific Relief Act reads as follows:-

“Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”

9. In view of this provision the Courts have the discretion as to the declaration of status or right. The only exception provided in this Section is the court shall not make any such declaration for status or right where the plaintiff being able to seek further relief than a mere declaration of title omits to do so. Therefore, whether the court shall grant the relief to the plaintiff or not that can be gone into in the judgment itself.

10. It may be mentioned here that it is not a ground for



dismissal of the suit or it is not a ground for rejection of the plaint. It is settled principles of law that the amendment, if allowed, always relates back to the date of institution of the suit. In the case of **Vinay Krishna Vs. Keshav Chandra and another, A.I.R. 1993 Supreme Court 957** the Supreme Court has held that the suit was not maintainable as the plaintiff was not in exclusive possession. Now, therefore, in view of the decision of the Supreme Court it is to be seen as to which party is in possession of the property. This view was taken by the Supreme Court in the case of **Gian Kaur Vs. Raghubir Singh, (2011) 4 Supreme Court Cases 567**. In the case of **Union of India Vs. Ibrahim Uddin & Anr.**, also it was admitted fact that plaintiff was not in possession of the suit property and, therefore, in such circumstances it was held that the suit was not maintainable. It does not mean that at the very initial stage the suit is to be dismissed on this ground alone. It is a matter which can be investigated and thereafter on giving findings only the court can decide this issue.

11. So far the decision of the Supreme Court in the case of **Ram Saran and another Vs. Smt. Ganga Devi, A.I.R. 1972 Supreme Court 2685** is concerned, it appears that in that case also the defendant was in possession of the some of the suit properties. The Supreme Court in such circumstances held that



when the defendant is admittedly in possession of the property the plaintiff's suit will not be maintainable because of Section 34 of the Specific Relief Act, as no consequential relief has been claimed. In the present case, it appears that the consequential relief for injunction has already been prayed for. However, to avoid any further technical objection the amendment application was filed. It is settled principles of law that at the time of hearing of the amendment application under Order 6 Rule 17 of the Code of Civil Procedure the Court is not required to decide the amendment application on merit. Reference may be made to the decision of the Supreme Court, **(2006) 4 Supreme Court Cases 385 (Rajesh Kumar Aggarwal & Ors Vs K.K. Modi & Ors)** and **(2008) 17 Supreme Court Cases 671 (Lakha Ram Sharma Vs. Balar Marketing Private Limited)**

12. The Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others, (2009) 10 Supreme Court Cases 84** has held that the courts have very wide discretion in the matter of amendment of pleadings. While deciding the applications for amendment the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide worthless and/or dishonest amendment. The first condition which

must may be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for determination of the real controversy. If that condition is not satisfied the amendment cannot be allowed. This is the basic test which should govern court's discretion in grant or refusal of the amendment. The other important condition which should govern discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. In the present case, there is no question of any prejudice arises to the other side as only in the relief portion the plaintiff is praying for the relief of possession or recovery of possession. Merely because amendment is allowed, relief is not going to be granted, unless the court is satisfied that the plaintiff is entitled for the said relief. In the present facts and circumstances when the plaintiff is not praying for any amendment in the facts nor is praying for adducing further evidence it cannot be said that the amendment sought for is mala fide. Further since both the parties are claiming title and possession over the suit property, the amendment sought for is essential for the just decision of the controversy and, therefore, the court below should have allowed the amendment application instead of rejecting the same on the technical ground i.e. proviso to Rule 6 Rule 17 of the Code of Civil Procedure as in the present case, no prejudice is

caused to the respondent herein.

13. So far the submission of the learned counsel for the respondents that amendment sought was barred by law of limitation is concerned, it may be mentioned here that it is the suit filed by the plaintiff under Article 65 of the Limitation Act and, therefore, it is for the defendant to show that from which date the possession of the defendant became adverse then only it will be considered that the claim is barred by law of limitation. Further the Hon'ble Supreme Court in **(2001) 2 Supreme Court Cases 472 (Ragu Thilak D. John Vs. S. Rayappan & Ors.)** has held that even if prima facie it appears that the claim is barred then also the issue can be framed on this question and the same can be decided finally in the judgment but on that ground amendment cannot be refused. The court below, therefore, has not exercised the jurisdiction vested in it by law and thereby occasioned failure of justice. Thus, this writ application is allowed and the impugned order is set aside. The amendment sought for by the plaintiff is hereby allowed.

14. Interim order of stay, if any, is vacated.

(Mungeshwar Sahoo, J)

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