

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.27 of 2015

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Pappu Singh

.... Petitioner/s

Versus

Shanti Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 08-03-2016

Heard the learned counsel for the petitioner.

By the impugned order dated 27.06.2014, the learned Sub Judge II, Kaimur in Title Suit No.10 of 2005/1164 of 2014 allowed the amendment application filed by the defendant at belated stage recording finding that all the amendments sought for are appears to be typing mistakes.

Perused the order passed by the Court below.

The learned counsel for the petitioner only objected that earlier in the written statement, no case was made by the defendant that the Hibanama was not for pious purpose but by amendment, now they are making a case that the Hibanama was for pious purpose.

It may be mentioned here that the plaintiff has prayed for declaration that the said Hibanama is void ab initio. It is not the case of the plaintiff that the amendment sought for by the



defendant is mala fide or that it will cause any prejudice to the petitioner. Since the relief is claimed for declaration of title, whether it was for the pious purpose or not for pious purpose, will not make any difference. Further, the Court below has recorded the finding that the amendment sought for are only for the purpose of correction of typing error.

It is settled principles of law that the first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the Court's discretion in grant or refusal of amendment. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by cost then there is no injustice. The Courts have very wide discretion in the matter of amendment of pleading. The Court must not refuse bona fide, legitimate, honest and necessary amendment and should never permit mala fide, worthless and/or dishonest amendment.

In the present case, it is not the case of the plaintiff that the amendment sought for is mala fide, worthless or dishonest

amendment. Whether the Hiba was for pious purpose or not, that is a matter that can be decided finally in the suit itself.

Now, therefore, I find no reason to interfere in the impugned order. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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