

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2195 of 2013

=====

Hari Nandan Rai S/O Late Brahmadeo Rai R/O Village- Bairiya, P.S.-
Gopalpur, District- Patna.

.... Petitioner/s

Versus

1. Ramanand Singh Yadav S/O Late Brahmadeo Rai.
2. Ajay Kumar S/O Ramanand Singh Yadav.
3. Uday Shankar S/O Ramanand Singh Yadav all R/O Village And Post-
Bairiya, P.S.- Gaurichak/Gopalpur (New), District- Patna
4. Mukesh Kumar.
5. Balister Rai.
6. Lalan Rai.
7. Mithilesh Rai.
8. Deepak Kumar (Minor) S/O Hari Nandan Rai, Under The Guardianship
Of His Father Hari Nandan Rai all sons of Hari Nandan Rai, R/O
Village- Bairiya, P.S.- Gopalpur, District- Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Md. Waluer Rahman, Adv.
Mr. Ranjeet Choubey, Adv.
Mr. Nishant Kumar Sinha, Adv.

For the Respondent/s : Mr. Sanjeev Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

6 16-02-2016 Heard Mr. W. Rahman, the learned counsel
appearing on behalf of the petitioner. Nobody has appeared on
behalf of the respondents even though the notices issued to them
have been reported to be validly served.

Calling in question the legal sustainability of the
impugned order rejecting the prayer of the defendant-petitioner for

amendment in the written statement, the present application under Article 227 of the Constitution of India has been filed.

From the records, it appears that the suit for partition was filed by the plaintiff-respondents. The defendant-petitioner appeared in the said suit and filed a contesting written statement asserting that there had already been partition of the suit property between the plaintiffs and the defendant long back and therefore the present suit for partition was not maintainable. The parties led their evidence and at the stage of argument a petition was filed by the defendant-petitioner praying for amendment in the written statement. From the amendment petition as annexed with the present application, it transpires that the amendment was sought for adding two schedules to the written statement containing the description of the properties allotted to the plaintiff no. 1 and the defendant-petitioner in the earlier partition. The learned court below, after hearing the parties, has rejected the prayer for amendment by the impugned order mainly on the ground that the amendment has been sought at the belated stage when the suit was posted for argument and as such, the prayer cannot be allowed in view of the proviso to Order 6 Rule 17 C.P.C.

Mr. Rahman, the learned counsel for the petitioner has submitted that the proposed amendment is only for elaborating



the facts earlier stated in the written statement and is clarificatory in nature. It has also been submitted that the proposed amendment does not change the nature of the defence which remains the same that the relief for partition as claimed by the plaintiffs cannot be granted in view of the earlier partition. It has also been submitted by the learned counsel for the petitioner that the petitioner does not propose to lead any further evidence in the suit if the prayer for amendment is allowed. The reliance has been placed upon the decision in the case of **Ram Niranjana Kajaria Vs. Jugal Kishore Kajaria, 2015 (4) P.L.J.R. S.C. 290.**

After considering the submissions and the facts appearing from the record, it is manifest that in the suit for partition filed by the plaintiff-respondents the present petitioner is the defendant who has contested the suit mainly on the ground that there has been previous partition between the plaintiffs and the defendant with regard to the suit properties. The seminal issue demonstrably therefore in the suit is the previous partition as asserted by the defendant. From the perusal of the proposed amendment, it transpires that the defendant-petitioner has sought to add the two schedules in the written statement containing the description of the properties said to have been allotted respectively to the plaintiff no. 1 and the defendant in the previous partition.

The defence of earlier partition as prayed in the written statement has remained unchanged and the amendment is only to elaborate and clarify the previous statements made in the written statement.

In the decision in the case of **Ram Niranjana Kajaria** supra), the Apex Court has laid down in paragraph 23 of the judgment that “delay in itself may not be crucial in an application for amendment in a written statement, be it for introduction of a new fact or for explanation or clarification of an admission or for taking an alternate position”.

In view of the dictum aforesaid, the rejection of the prayer for amendment by the learned court below on the ground of delay cannot be legally sustained. However, the fact that the suit has reached to the stage of argument also cannot be ignored. In this regard the categorical stand has been taken by the learned counsel for the petitioner that no further evidence in the suit after the proposed amendment are allowed, would be led by the defendant. As such, the prayer for amendment as made by the petitioner in the written statement for adding the two schedules in the written statement only does not appear to prejudice the plaintiffs in any manner.

For the aforesaid reasons and discussions, this application is allowed and the impugned order is set aside. The

prayer for amendment in the written statement as made by the petitioner is also allowed but the petitioner shall not be entitled to lead further evidence in view of the amendment.

(V. Nath, J)

Devendra/-

U			
---	--	--	--