

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15206 of 2014

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1. Prahalad Chaubey son of late Krishna Dutta Chaubey
 2. Madhuri Devi wife of Prahalad Chaubey both are resident of Mohalla- Laxman Nagar, Pathari Ghat, PO- Bettiah, PS- Bairiya, District- West Champaran.

.... Petitioner/s

Versus

1. Achutanand Jha son of late Bhola Dutt Jha
2. Smt. Jyoti Jha wife of Achutanand Jha resident of Mohalla- Laxman Nagar, Pathari Ghat, PO- Bettiah, PS- Bairiya, District- West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pathak Dhananjay Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-10-2016

Heard learned counsel for the petitioners.

By the impugned order, the learned court below has allowed the prayer of the plaintiffs for amendment in the plaint.

Learned counsel for the petitioner has submitted that by the impugned order allowing the amendment as prayed, the nature and scope of the suit will change but the learned court below has not considered the said aspect. It has also been canvassed that earlier the plaintiffs filed a petition on 09.12.2013 seeking the same amendment but they did not press the same and therefore the present application is barred as the second application for the same amendment would not



be maintainable. Learned counsel for the petitioners has placed reliance upon the decision in the case of **Selva Vinayagar Temple Vs. Karur Municipality A.I.R. 1995 Mad. 171** in support of the aforesaid submissions that the second application for amendment would not be maintainable.

After considering the submissions and the perusal of the impugned order, it is evident that the learned court below has concluded that the proposed amendment by the plaintiffs has been sought for in view of the subsequent event. The learned court below, therefore, has exercised its discretion in allowing the prayer for amendment after considering the facts and circumstances of the case. In view of the provision under Order 6 Rule 17, there is no legal impediment in allowing the amendments which are necessary for determining the issues arising between the parties in the suit. This Court has not been persuaded to find perversity in any manner in the discretion exercised by the learned court below while passing the impugned order. The submission on behalf of the petitioners that the second application for amendment was not maintainable is misconceived in the facts and circumstances of the case when the previous application was not disposed of on merits but dismissed as not pressed. The decision relied upon on behalf of the petitioners is therefore clearly distinguishable.



This Court, accordingly, is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is, thus, dismissed.

Devendra/-

(V. Nath, J)

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