

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1018 of 2016**

- =====
1. Lalan Prasad Sah, Son of Late Ram Chandra Sah
 2. Jang Bahadur Sah, Son of Late Ram Chandra Sah
 3. Upendra Sah Son of Late Ram Chandra Sah.

All residents of village - Majiya, P.O. Baxama, P.S. Goraul, O P Katahara,
District Vaishali (Hajipur)

.... Defendants 1st Set/Petitioners

Versus

1. Ram Ekbal Sah Son of Late Bechchu Sah
2. Laldeo Sah Son of Late Bechchu Sah
3. Binod Sah Son of Late Bechchu Sah.

All residents of village - Majiya, P.O. Baxama, P.S. Goraul, O P Katahara,
District Vaishali (Hajipur) Plaintiffs/Respondents 1st Set.

4. Umesh Sah Son of Jai Mangal Sah, Maternal Grand Son of Late Ram Chandra Sah

5. Ratnesh @ Naresh Sah Son of Jai Mangal Sah, Maternal Grand Son of Late Ram Chandra Sah

6. Jai Mangal Sah Son of Karam Chand Sah

7. Munni Devi Daughter of Jai Mangal Sah No. 4 to 7 residents of village - Chitrauli, P.O. Kurhani, P.S. Kurhani, District - Muzaffarpur

8. Manju Devi Daughter of Ganesh Sah, Maternal grand daughter of Late Ram Chandra Sah resident of village & P.O. Subhai, P.S. Hajipur Sadar, District Vaishali

9. Bindeshwar Devi Wife of Bindeshwar Sah, Daughter of Late Ram Chandra Sah resident of village - Punas, P.O. Muzaffarpur, P.S. Ahiyapur, District - Muzaffarpur

10. Gita Devi Wife of Shankar Sah, Daughter of Late Ram Chandra Sah resident of village & P.O. Dharampur, P.S. Minapur, District - Vaishali

11. Urmila Devi Wife of Baskit Sah, Daughter of Late Bechchu Sah resident of village - Babhnagari, P.O. & P.S. Sakara, District Muzaffarpur

12. Raj Kumari Devi Wife of Raj Kumar Sah, Daughter of Late Bechchu Sah resident of village - Khesrahi, P.O. & P.S. Patepur, District Muzaffarpur

.... Defendants 2nd set/Respondents 3rd Set. Respondents.

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Appearance :

For the Appellant/s : Mr. Praveen Prabhakar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

2 08-11-2016 Heard learned Senior Counsel Mr. Mahesh Narayan

Parabat appearing on behalf of the petitioners.

2. Perused the impugned order dated 22.07.2016 passed

by the learned Sub-Judge XIVth, Vaishai at Hajipur in Title Suit No. 430 of 2013 whereby the learned court below allowed the amendment application filed by the plaintiffs/respondents.

3. Learned Senior Counsel relying on the two decisions reported in 2006 (4) PLJR 260 and 2006 (3) PLJR 518, submitted that this Court has held that while allowing the amendment application, the court must record the finding regarding due diligence that is provided in proviso to Order 6 Rule 17 CPC inserted by the CPC Amendment Act No. 22 of 2002 with effect from 01.07. 2002, but the court below did not record any finding. According to the learned counsel the evidence of the plaintiffs is going on. Therefore, the trial has commenced and after trial, the court cannot allow amendment of pleadings. The court below has not consider the principle of law laid down by this Court in the above two decisions.

4. Admittedly, the suit is partition suit filed by the plaintiffs/respondents. It is also admitted by the petitioners that evidence of the plaintiffs was going on on the date of passing of the impugned order.

5. The Hon'ble Supreme Court in the case of Rajkumar Gurawara Vs. S. K. Sarwagi and Company Private Limited and another reported in 2008 (XIV) S.C.C. 364 had held that in case of amendments after the commencement of trial, particularly, after

completion of the evidence, the question of prejudice to the opposite party may arise 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 CPC.

6. Admittedly, in the present case the evidence of the plaintiffs has not been concluded rather evidence of the plaintiffs is going on.

7. The Hon'ble Supreme Court in the case of Revajeetu Builders and Developers Vs. Narayanswamy and Sons and others 2009 (10) S.C.C. 84 had held that the court have very wide discretion in the matter of amendment of the pleadings. While deciding the application for amendment, the court must not refuse bonafide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments. 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 real question in controversy. The other important condition which should govern the decision of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side.

8. The Hon'ble Supreme Court recently in 2016 (1) SCC 332 L.C. Hanumanthappa Vs. H.B. Shivakumar had held that all amendments ought to be allowed which satisfy the two conditions

(a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Thus, amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.

9. In view of all these settled principles laid down of the Hon'ble Supreme Court, there is no question of prejudice to the petitioners arise because the petitioners are yet to adduce their evidence in the present case. Further the evidence of the plaintiffs is going on. Therefore, the defendants have got right to file additional written statement to the amended portion only. It is not a case of the petitioners that the amendments sought for, are not necessary at all for determination of the controversy between the parties.

10. In view of the above discussions, I do not feel inclined to interfere with the order impugned. Accordingly, this Civil Miscellaneous Application is dismissed.

(Mungeshwar Sahoo, J)

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