

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4560 of 2014

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Bindeshwar Singh

.... Petitioner/s

Versus

Ashok Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratan Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

3 22-01-2016

Heard learned counsel Mr. Ratan Kumar Sinha for the petitioner and learned counsel, Mr. Sri Surendra Kishore Thakur for the respondents.

By the impugned order dated 15.01.2014, learned Sub-Judge VI, Vaishali at Hajipur rejected the amendment application filed by the plaintiff-petitioner in Title Suit No. 466 of 2005.

Perused the order passed by the Court below.

The Court below found that entirely new fact has been sought to be introduced by way of amendment at very belated stage. Admittedly, both the parties have already adduced their evidences and the same have already been closed. The argument of the defendants have already been closed and the suit was fixed for argument of the plaintiff. At this stage, the amendment application was filed and from perusal of paragraph-7,8 and 9 of

the plaint and the amendment application, which is Annexure-1 to the writ application, it appears that the plaintiff has filed this application for amendment praying for insertion of a new paragraph giving entirely a new fact.

It is settled principles of law that a pre-trial amendment could have been allowed liberally as the opposite party would not be prejudiced because he will have an opportunity of meeting the amendment sought to be made. However, in case of amendments after the commencement of trial, particularly after completion of the evidence, as in this present case the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso to Order 6 Rule 17 C.P.C., if the parties to the proceedings are able to satisfy the Court that in spite of due diligence, they cannot raise the issue before the commencement of the trial and the Court is satisfied with their explanation, amendment can be allowed even after commencement of the trial and not otherwise. In the present case, there is no reason assigned by the plaintiff as to why this fact which was known to him from before was neither pleaded nor it was amended prior to the hearing of the case.

In view of the above facts when the court below has

recorded this finding, there is no question of interference in exercise of supervisory jurisdiction arises. Under Order 6 rule 17 C.P.C, no case of interference with under Article 227 is made out and thus this writ application is dismissed.

(Mungeshwar Sahoo, J)

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