

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12725 of 2015

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Mohan Prasad Sinha & Ors

.... Petitioner/s

Versus

Shiv Nath Prasad & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant

For the Respondent/s : Mr. Sanjeev Nikesh

Mr. Shailendra Kumar Dwivedi

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 14-12-2016 At the time of hearing of the I.A. No.3818 of 2016 filed by the respondents, both the parties agreed that the writ application may be heard on merit and accordingly I heard them on merit and instead of disposing of the I.A., this writ application is being disposed of on merit.

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

Perused the impugned order dated 19.06.2015 passed by Sub Judge VII, Siwan in Title Suit No.289 of 2012 whereby the learned Court below rejected the amendment application only on the ground of delay i.e. the plaintiff has examined some witnesses and the amendment sought for has not been filed prior to framing of issues.

Admittedly, on the date of rejection of the amendment



application i.e. the impugned order dated 19.06.2015, one witness was examined by the plaintiff. The amendment application is Annexure 5. From perusal of the amendment application, it appears that the plaintiff filed the amendment application seeking for addition of one paragraph 16(ka) to the effect that on 07.10.2014, in the night from 10 P.M. to 6 A.M., the defendants have demolished the wall constructed by the plaintiff.

The learned counsel for the petitioners submitted that no prejudice is caused to the defendants if the amendment is allowed and in fact, it is subsequent event i.e. during pendency of the suit, this event took place.

On the other hand, the learned counsel for the respondents submitted that in fact, this amendment is sought for by the plaintiff with a view to get the respondents punished on the ground that the respondents have violated the injunction order of the High Court.

It is admitted fact that only one witness was examined by the plaintiff on the date when the impugned order was passed. So far the question regarding merit, as to whether the amendment sought for is for punishing the respondents or not, is an entirely different matter. The same cannot be decided in this suit for the purpose of punishing the respondents. For that, a separate



proceeding has already been initiated which is still pending. Merely because amendment will be allowed, it will not help the plaintiff but certainly the amendment sought for is necessary in the present suit because according to the plaintiff, he has claimed the relief for declaration of title and confirmation of possession also.

The Hon'ble Supreme Court in the case of **(2008) 14 Supreme Court Cases 364(Rajkumar Gurawara vs. S.K.Sarwagi and Company Private Limited and Another)** has held that "a pre-trial amendment can be 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, 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 C.P.C."

In the present case, there is no question of completion of evidence of defendant arises. Moreover, only one witness has been examined by the plaintiff. Therefore, there is no question of prejudice to the respondent arises. However, if so advised, the respondents may file additional written statement to the amended portion of the plaint only.



In the result, this writ application is allowed. The impugned order is set aside. The amendment application filed by the plaintiff is thus allowed. Accordingly, I.A. No.3818 of 2016 is also disposed of.

(Mungeshwar Sahoo, J)

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