

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8719 of 2014

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Ajay Kumar Singh Son of Sri Ram Kailash Singh Resident of village
Daulatpur Chandi, P.S. Hajipur Sadar, District - Vaishali.. Petitioner/s

Versus

Ram Nandan Thakur Son of Late Ram Pd. Thakur resident of village
Rohuwa, P.O. and P.S. Bhagwanpur, District - Vaishali.

.. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madan Jeet Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

3 07-04-2016

Heard the learned counsel for the petitioner.

By the order under challenge in this application under Article 227 of the Constitution of India, the learned court below has allowed the prayer for amendment of the defendant in the written statement.

The suit has been filed by the plaintiff for specific performance of contract on the basis of agreement for sale (Mahadnama) asserting the same to have been executed by the defendant after accepting Rs. 2,50,000/- by way of advance. The prayer of the plaintiff in the suit is to direct the defendant to execute the sale deed after receiving the remaining consideration amount. During the pendency of the suit, the defendant prayed for amendment in the written statement which has been allowed by the court by the impugned order.

The learned counsel for the petitioner has submitted



that by the proposed amendment, the defendant has changed the nature of his defence. It has also been submitted that even prior to this, the defendant had several times filed amendment petitions which have been allowed by the court. It has, therefore, been canvassed that the intention of the defendant is only to delay the suit. The learned counsel for the petitioner has further submitted that the defendant has earlier averred regarding possession of the plaintiff over the suit property but now by amendment he wants to change the said stand. It has been submitted that the learned court below has failed to consider that the present amendment would change the nature of the defence.

After considering the submissions and perusal of the impugned order, it is manifest that the plaintiff-petitioner in the suit has come out with the case of execution of an agreement for sale by the defendant on payment of Rs. 2,50,000/- by way of advance. The defendant in his written statement has not accepted the execution of the said agreement for sale or receipt of the part of the consideration money as asserted by the plaintiff. In fact, it is apparent from the impugned order also that the defendant's case is total denial of the assertions made by the plaintiff with regard to the execution of the Mahadnama (agreement for sale), payment of consideration money as well as the possession of the plaintiff over the suit land. The learned court below after considering the pleadings and submissions of the parties as well as the proposed

amendments has held that by the proposed amendments the defendant is not taking away or resiling from the admitted facts in the written statement. The fact of earlier amendments by the defendant in the written statement has also been taken into notice by the learned court below and therefore cost has also been imposed on the defendant.

The purpose of amendment in the pleading of Order 6 Rule 17 C.P.C. as is evident from the provision itself is to enable the determination of real question in controversy between the parties in a suit. As found by the learned court below, through the proposed amendments the defendant has only elaborated and explained his earlier stand taken in the written statement and there is no attempt to resile from earlier admissions.

For the aforesaid reasons, this Court does not find that the learned court below has committed any illegality or error of jurisdiction in passing the impugned order. The application is, accordingly, dismissed.

The learned court below, however, is directed to proceed expeditiously with the suit in view of the delay already caused.

Devendra/-

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(V. Nath, J)