

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3073 of 2015

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Man Mohini Viswas

.... Petitioner/s

Versus

Bimal Kumar Biswas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar Jha

For the Respondent/s : Mr. Pandey S Sahay

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 21-10-2016

Heard the learned counsel, Mr. Abinash Kumar Sinha

for the petitioner and the learned counsel for the respondent.

Perused the impugned order dated 09.01.2015 passed by
Munsif, Bagaha, West Champaran in Partition Suit No.62 of 2006
whereby the learned Court below rejected the amendment
application filed by the plaintiff-petitioner on the ground that the
application has been filed at a very belated stage.

The amendment application has been annexed as
Annexure 1. From perusal of the proposed amendment, it appears
that all the amendments prayed for are only in the nature of
correction of the khata number and plot number of the schedule
property. The Court below, without assigning any reason as to
whether the amendment sought for is malafide or that it will
prejudice to the other party, has rejected the application only on
the ground of delay.



The Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers Vs. Narayanaswami and sons and others, (2009) 10 Supreme Court Cases 84** has held that the Courts have very wide discretion in the matter of amendment of the pleadings but the Court's power must be exercised judiciously and with great care. While deciding application for amendment, the Courts must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide and/or dishonest amendment. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs then there is no injustice.

In the present case, it is not the case of the respondent that by amendment, new plots are being substituted. According to the petitioner, the disputed land is the same but by mistake, incorrect khata number and plot number were mentioned in the plaint. Therefore, in view of this fact, there is no question of prejudice to the other side arises as there is no dispute between the parties regarding the identity of the suit land.

So far delay is concerned, it may be mentioned here that since the amendment sought for is in the nature of correction only,

which is necessary for determination of the controversies between the parties, on the ground of delay, it cannot be and should not have been rejected by the Court below.

In the result, this writ application is allowed. The impugned order is set aside. The amendment application filed by the plaintiff-petitioner is hereby allowed.

(Mungeshwar Sahoo, J)

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