

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7395 of 2014

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Ashok Kumar Mahto & Ors

.... Petitioner/s

Versus

Jogi Lahotia & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Bhushan Das

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 17-02-2016

Learned counsel for the petitioners admitted the fact

that by amendment new facts are being sought to be introduced and if it is allowed the plaintiff has to be given opportunity to adduce evidence.

Admittedly the present suit has been filed on 27.09.2002 which is evident from the copy of the plaint presented before this Court at the time of hearing of this writ application.

Perused the amendment application. A new fact regarding transaction and possession since the year 1943 is sought to be introduced by way of amendment. The plaintiff's evidence has already been closed. The Hon'ble Supreme Court in the case of **Rajkumar Gurawara Vs. S.K. Sarwagi and Company Private Limited and another, reported in (2008) 14 Supreme Court Cases 364** 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 amendment after commencement of trial as in the present case particularly after completion of the evidence (as in the present case the plaintiff's evidence has been closed) 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 contentions prescribed in the proviso to Order VI Rule 17 CPC. If the parties to the proceeding are able to satisfy the Court that in support of due diligence they could not raise the issue before commencement of trial and the Court is satisfied with their explanation, amendment can be allowed even after commencement of trial and not otherwise. Here, admittedly the plaintiff's evidence has already been closed and as submitted by learned counsel for the petitioner if amendment is allowed then there will be de-novo trial. The court below has rightly rejected the amendment application, therefore, the impugned order cannot be interfered with in supervisory jurisdiction.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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