

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11481 of 2014

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1. Madan Sah S/o Ramanand Sah
2. Lal Babu Prasad S/o Ramanand Sah
3. Wakil Ahmad S/o Jokhan Mian
4. Shakeel Ahmad S/o Jokhan Mian
5. Kamalpati Devi W/o Bhuwneshwar Prasad
6. Santosh Kumar S/o Bhuwaneshwar Prasad
7. Bhuneshwar Prasad S/o Chandradeo Mahto All Residents of Village
Raghunathpur, P.S. Ghoradani, P.O. Ghoradani, District Champaran (East).

.... Petitioner/s

Versus

1. Mukesh Kumar Shukla S/o Late Vishun Prasad Shukla
2. Rakesh Kumar Shukla S/o Late Vishun Prasad Shukla
3. Most. Shakuntala Kuer W/o Late Vishun Prasad Shukla Resident of Village
Raghunathpur, P.S. Chhoradani, P.O. Chhoradani, District East Champaran.
4. Basant Kumar Shukla S/o Late Deo Narain Shukla
5. Manoj Kumar Shukla S/o Late Deo Narain Shukla
6. Shakuntala Kuer W/o Late Deo Narain Shukla All Residents of Village
Raghunathpur, P.O. + P.S. Chhoradani, District East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Sinha, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 29-08-2016

Heard learned counsel for the petitioners.

The defendants are the petitioners in this application which
has been filed questioning the legal sustainability of the impugned
order by which the learned court below has allowed the prayer for
amendment in the written statement.

From the perusal of the impugned order, it transpires that the amendment has been sought for at the stage when the argument on behalf of the parties in the suit has come to an end.

Learned counsel for the petitioners has submitted that, according to the settled principles of law, the amendment can be made at any stage of the proceeding and the delay cannot be a ground for rejection of the prayer for amendment. It has also been contended that there is distinction between the prayer for amendment in the plaint and the prayer for amendment in the written statement and different criteria operates while considering the respective prayers. It has also been submitted by the learned counsel for the petitioners that the amendment sought for is only formal in nature whereby the defendants in paragraph-19 of the written statement seeks to introduce the word 'Na' and such amendment, if allowed, will not change the nature and scope of the suit. Learned counsel has further placed reliance upon the decision in the case of **Gopal Prasad Vs. Lakshmi Prasad, A.I.R. 2006 Jhar. 52** and in the case of **Panna Devi Vs. Harendra Shahi @ Harendra Prasad Shahi, 2014 (2) PLJR 315** and on that basis it has been contended that the court should exercise its inherent power as well to allow the prayer for amendment in the written statement, as prayed.

After considering the submissions and the perusal of the



materials on record as well as the impugned order, it is manifest that the suit has been filed in the 2000 and the arguments on behalf of the parties have also been completed. The prayer for amendment in the written statement has been preferred at that stage whereby the defendants want to insert word 'Na' which will obviously have the effect of turning the negative assertion in the pleading to a positive one.

It is also condign to mention here that earlier the matter was adjourned in order to enable the petitioners to produce written statement so as to appreciate nature of amendment being formal or otherwise by reading the same with other assertions made in the written statement. However, the learned counsel for the petitioners has expressed his inability to produce the written statement for want of appropriate instruction.

The provision for amendment of pleadings as contained in order 6 Rule 17 C.P.C. has undergone amendment whereby a proviso has been added requiring that the prayer for amendment in the pleading, after the trial has commenced can be entertained only when the party seeking amendment satisfies the court that in spite of due diligence, such prayer could not have been made before the commencement of trial. The averments made in the amendment petition as annexed with this application does not disclose any such

circumstance in not preferring the amendment by the defendants at any earlier stage of the suit. The specious plea in this regard has been made that the defendant-petitioners had no knowledge of the averment made in paragraph-19 of the written statement. In the backdrop of the fact that the proceeding of the suit has reached to the final stage with the defendants-petitioners participating in the proceeding although, the inference of lack of due diligence is inevitable and there is no escape from the rigours of the proviso to Order 6 Rule 17 C.P.C. The decisions relied upon on behalf of the petitioners have been rendered in different setting of facts and have no application in the present facts and circumstances of the case.

In this backdrop, this Court is not inclined to interfere with the impugned order. The application is, accordingly, dismissed.

However, the petitioners shall have the liberty, if such occasion arises, to raise objection in this regard in accordance with law under Section 105 C.P.C.

(V. Nath, J)

Devendra/-

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