

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.435 of 2016**

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Md. Noorulhoda

.... Appellant/s

Versus

Saduddin & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamal Kishore Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 26-08-2016 Heard the learned counsel, Mr. Arshad Jamil Hashmi, on behalf of the petitioner.

Perused the impugned order dated 21.05.2016 passed by the learned Sub Judge V, Saharsa in Title Suit No.89 of 2013 whereby the learned Court below allowed the amendment application filed by the plaintiff respondent.

The learned counsel for the petitioner submitted that the Court below wrongly held in the order that the present petitioner did not file the rejoinder to the amendment application. The learned Court below also did not record any submission made by the petitioner and had the learned Court below should have recorded the contention, the result would have been otherwise. According to the learned counsel in fact the amendment application was filed for amendment of the plaint seeking correction of plots number, khata number and area on the basis of

sale deed whereas the sale deed was not a sale deed rather it was an indenture which was meant for agreement and there is nothing mentioned like khata number, plot number and area. The learned counsel further submitted that the learned Court below also wrongly held that the amendment sought for are formal in nature and the amendment is not changing the nature of the suit.

From perusal of the impugned order, it appears that the Court below held that the amendment sought for are with respect to the amendment of khata number, plot number and area in the schedule of the plaint. The suit has been filed for declaration of title.

So far submission of learned counsel for the petitioner that in the indenture meant for agreement, neither there is khata number nor plot number nor area and that the plaintiff filed the amendment terming the said indenture as sale deed, it may be mentioned here that these questions raised by the petitioner are question of fact on merit.

It is settled principal of law that while considering an amendment application, the Court is not required to go into the merit of the statements of the amendment application. That can only be gone into at the time of final hearing of the suit. Reference may be made in this respect to the decision of the

Hon'ble Supreme Court reported in *(2006)4 SCC 385 and (2008)17 SCC 671*.

Admittedly, still no issues have been framed in the suit. Therefore, the amendment application filed by the plaintiff respondent is a pre-trial amendment application. No prejudice is caused to the defendant, if the amendment is allowed because the defendant petitioner will have the opportunity to meet the amendment by way of filing additional written statement or by adducing evidence and, therefore, in my opinion, no case for interference in exercise of supervisory jurisdiction is made out and thus, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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