

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1512 of 2016**

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1. Bhikhanri Bind
2. Munib Bind
3. Pramod Bind
4. Binod Bind All are sons of Late Jagrup Bind Residents of Village - Sondihara, Police Station - Bhabhua, District - Kaimur (Bhabhua).

.... Appellant/s

Versus

1. Ashutosh Kumar Pandey Son of Rajiv Lochan Pandey
2. Kapil Muni Pandey Son of Rajiv Lochan Pandey
3. Rajiv Lochan Pandey Son of Sheo Lok Pandey All are residents of Village - Sondihara, P.O. Muthani, Police Station - Bhabua, District - Kaimur at Bhabua.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Helal Ahmad
For the Respondent/s : Mr.

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

2 22-12-2016 Heard learned counsel for the petitioners.

Perused the impugned order dated 20.07.2016 passed by learned Sub-Judge-III, Bhabhuwa, in Title Suit no.310 of 2008 whereby the learned court below allowed the amendment application filed by the plaintiff on payment of cost of Rs. 1000/- and also rejected the application filed by the defendant- petitioner for initiating a proceeding for punishing the plaintiff under Section 195 Cr.P.C. So far amendment is concerned, according to learned counsel for the petitioner under Order 6, Rule 17, no amendment can be allowed if the trial has commenced and in the present case



the trial has commenced and after evidence of the plaintiff, the defendant has also examined one witness. So far this submission of the learned counsel for the petitioner is concerned, it may be mentioned here that in the present case, the plaintiff filed amendment application for correction only in the schedule of the plaint i.e. plot no. 25 to plot no. 27. This amendment, sought for, is in the nature of correction only and therefore there is no question of any prejudice to the petitioner arises. The Hon'ble Supreme Court in the case of Revajeetu Builders and Developers – v- Narayanaswamy & Sons, (2009) 10 SCC 84, has held that the courts have wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously .and with great care. While deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide or dishonest amendments. The other important condition which should govern the discretion of the court is the potentiality or injustice which is likely to be caused to the other side.

In the present case, since amendment has been sought for only to correct plot number, there is no question of prejudice to the petitioner arises.

So far the application filed by the defendant-



petitioner for initiating a criminal proceeding against the respondent under Section 195 Cr.PC. is concerned, it may be mentioned here that the order under Section 340 Cr.P.C. is appealable. Moreover whenever an application is filed for initiating a proceeding under criminal procedure for punishment it is not necessary that the court should initiate a proceeding. Section 340 provides that if it is expedient in the interest of justice then the court has to make a complaint. It may be mentioned here that the evidences of the parties are still going on and therefore the petitioners who are the defendants are adopting this tactic to put pressure on the plaintiff and such type of fraudulent applications are being filed. Thus, this miscellaneous application is dismissed with cost of Rs. 5000/- (five thousand) to be paid by the petitioner to the respondents within two months, failing which respondent shall realize the cost through process of the court.

(Mungeshwar Sahoo, J)

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