

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9948 of 2015

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Pashu Pati Nath Choubey & Ors

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anish Chandra Sinha

For the Respondent/s : Mr. Sandeep Kumar- Ga8

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 26-04-2016

Heard learned counsel, Mr. Anish Chandra Sinha, appearing for the petitioner and Mr. Amresh Kumar Sinha, learned A.C. to G.A.-9 on behalf of the respondents.

2. It appears that the plaintiff filed Title Suit No. 364 of 2003 for declaration that entry in the name of the State of Bihar in the record of right is wrong. The suit was dismissed and thereafter the plaintiff filed T.A.No. 81 of 2009 before the lower appellate court. Before the lower appellate court, an application for amendment was filed under Order 6 Rule 17 C.P.C. and the lower appellate court rejected the amendment application only on the ground that the nature of the suit will be changed.

3. It may be mentioned here that from perusal of the plaint, which has been annexed as annexure, it appears that the plaintiff has stated in the plaint with regard to the title of the suit property. In the relief portion, only prayer has been made for



declaration of the title with respect to the suit property by way of amendment. Unless the plaintiff proves his title on the suit property the relief, which is claimed in the original plaint, cannot be granted and, therefore, it is necessary for the just decision of the controversy between the parties. If the amendment is allowed, it will not be a new case on fact and no further evidence will be necessary in support of the same. Both the parties entered to the trial knowing the case of each other about the title of the suit property. Now, therefore, it appears that the amendment sought for is formal in nature and is essential for just decision. If the amendment is refused, naturally, it will lead to multiplicity of proceeding.

4. The Hon'ble Supreme Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Ors.*** reported in ***2009 (10) SCC 84*** has held that all amendments, which are necessary for just decision of the controversy between the parties, should be allowed by the courts and the courts have wide discretion to allow the amendment. In the present case only on the ground of change of the nature of the suit, learned court below should not have rejected the amendment application. Since the amendment application has been rejected, it will occasion failure of justice and shall greatly prejudice the present petitioner. Thus, it

is allowed and the impugned order is set aside. The plaintiff-
petitioner’s application for amendment is allowed.

(Mungeshwar Sahoo, J)

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