

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18349 of 2015

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Bindeshwari Dubey & Ors

.... Petitioner/s

Versus

Union of India through the Secretary, Ministry of Home, Union of India,
New Delhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rang Nath Choubey

For the Respondent/s : Mr. S.D Sanjay (Addl. Soc. Gen.)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

4 20-07-2016 Heard the learned counsel, Mr. Rang Nath Choubey for

the petitioners, the learned senior counsel, Mr. S.D.Sanjay, Addl.

Solicitor General for the Union of India and the learned counsel,

Mr. Rajesh Kumar Verma, C.G.C.

Perused the impugned order dated 16.07.2015 passed by

learned Additional District Judge III, Buxar in Title Appeal No.45

of 2003 whereby the learned Court below has rejected the

amendment application on the ground that amendment application

is not applicable as the said amendment will change the nature of

the suit.

It may be mentioned that the plaintiff-appellant-petitioner

has filed the Title Suit No.42 of 1990 praying for declaration that

the suit property mentioned in Schedule I(ka) i.e. old Khata No.19,

Plot No.339, area 16 decimals included in new Khata No.210, Plot



No.278 measuring 96 decimals has wrongly been recorded in the name of Union of India. Before the appellate court, amendment application was filed regarding the identity on suit land and it is stated that in place of Plot No.278, it may be corrected as Plot No.318 and correspondingly the area may be mentioned as 1.08 acre in place of 96 decimals. The Court below has rejected this amendment application.

The learned counsel for the petitioners submitted that by mistake, wrong plot number with wrong area has been mentioned in the plaint. Subsequently, the petitioner detected that it is a mistake and, therefore, the amendment application was filed for correction of the correct plot number and area but the Court below wrongly held that it is not maintainable and refused to exercise a jurisdiction vested in it by law.

On the other hand, the learned Additional Solicitor General of India submitted that in fact, there is no basis for the claim made by the petitioner. The suit was filed for declaration of title with respect to Plot No.278 measuring 96 decimals which has been dismissed. In the appellate court, the amendment application has been filed praying for introducing Plot No.318 and now, the area is also sought to be changed to 1.08 acre, therefore, the amendment, if allowed will change the nature of the suit.

According to the learned Additional Solicitor General, the amendment application has been filed before the appellate court after long delay, therefore, in any case, the amendment has got no merit.

Perused the plaint which has been annexed in the supplementary affidavit. In the plaint, the plaintiff described the suit property and has prayed for declaration of title. His case is that his 16 decimals land in Khata No.19, Plot No.339 was recorded in old khata in the name of ancestor of the plaintiff. In recent survey, the land of the petitioner measuring 16 decimals has been recorded in the name of Union of India as Rasta. Earlier, the petitioners gave the number of plot as 318, area 96 decimals and according to the plaintiff-petitioner, this is by mistake. Therefore, by amendment, he is now seeking to correct the khata number and the area.

So far the submission of the learned Additional Solicitor General that the nature of the suit will change is concerned, it may be mentioned here that even if the khata number and area is corrected, as sought for by the plaintiff, the relief claimed in the suit will be the same. Therefore, there is no question of changing the nature of the suit arises.

So far the submission that there is delay in filing the

amendment application that too before the appellate court is concerned, it may be mentioned here that on the ground of delay, the amendment cannot be rejected, if it is necessary for just decision of the controversies between the parties.

So far the objection that the amendment application was filed before the appellate court is concerned, it may be mentioned here that appeal is continuation of the suit and the Court under Order VI Rule 17 of the C.P.C. has got jurisdiction at any stage to allow the amendment of the pleading, if it is necessary for the decision of controversy between the parties.

In my opinion, therefore, the Court below has rejected the application on the grounds which are not tenable and, therefore, the Court below has wrongly refused to exercise a jurisdiction vested in it by law. If the order is allowed to stand, it will not only prejudice the plaintiff but shall also occasion failure of justice and lead to multiplicity of proceedings.

Accordingly, this writ application is allowed. The impugned order is set aside. The amendment application filed by the petitioners is hereby allowed.

(Mungeshwar Sahoo, J)

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