

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.153 of 2017

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1. Anuradha Kumari wife of Rajesh Kumar
 2. Rajesh Kumar son of Late Bhola Prasad, both are resident of Mohalla- Cak Abdul Wahid Manjhaulia, Road Muzaffarpur, P.S. Kazimuhammadpur, District Muzaffarpur.

.... Appellant/s

Versus

Mrs. Poonam Prakash D/O Late Bhola Prasad, wife of Sri Anand Kumar, resident of Telecom Engineer Colony, P.O. Monaharpur, Kachuara, Nayachak, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amit Kumar Rakesh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL JUDGMENT

Date: 28-01-2017

Heard the learned counsel for the petitioners and the learned counsel for the respondent.

Perused the impugned order dated 14.11.2016 passed in Title Suit No. 371 of 2011 by the learned Sub Judge-VII, Muzaffarpur, whereby the learned court below has allowed the amendment application filed by the plaintiff respondent under order 6 Rule 17 C.P.C.

It appears that earlier the suit was filed by the plaintiff respondent praying for declaration of the sale deed in favour of the petitioners as null and void. Subsequently, she learnt that the present petitioners had filed a pre-litigation case for declaring that the petitioner no.2 is the adopted son of Bhola Prasad and Sita Devi i.e.



the father mother of the present petitioner. The said suit was compromised in the Lok Adalat and award was passed. When the plaintiff- respondent came to know about this compromise before the Lok-Adalat, she filed amendment application in the court below. The court below by the impugned order has allowed this amendment application.

The learned counsel for the petitioners submitted that the evidence of the plaintiff has already been concluded. Therefore, at this stage, the court below would not have allowed the amendment application as, according to proviso to Order VI Rule 7 C.P.C., the amendment cannot be allowed after commencement of a trial. The learned counsel further submitted that the respondent has challenged the award passed by the Lok-Adalat by filing a writ application before the High Court, which has been dismissed. Therefore, the learned court below would not have allowed the amendment application.

On the other hand, the learned counsel for the respondent submitted that, in fact, the evidence of the defendants has not yet started and, therefore, there is no question of prejudice to the petitioners arises and moreover, the High Court has directed the petitioners to approach the appropriate forum by initiating an appropriate proceeding while dismissing the writ application whereby the award of the Lok-Adalat was challenged.



Admittedly, the evidence of the plaintiff has only been concluded. The defendants' evidence has not yet started as submitted by the learned counsel for the petitioners.

The Hon'ble Supreme Court in the case of **RAJKUMAR GURAWARA VS. S.K. SARWAGI AND COMPANY PRIVATE LIMITED AND ANOTHER [(2008) 14 SCC 364]** has held that in case of amendments after the commencement of trial i.e. after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the party of the court to satisfy the conditions prescribed in the proviso to Order 6 Rule 17 C.P.C. In the present case, as stated above, the evidence of the defendants has not been completed. Therefore, the defendants-petitioners had got the opportunity to rebut the case of the plaintiff-respondent. Therefore, there is no question of prejudice to the petitioners arises. Moreover, so far the award passed by the permanent Lok-Adalat is concerned, it is not the disputed question of fact. Furthermore, the plaintiff is only seeking an amendment in the relief portion and not seeking amendment in the body of the plaint nor is introducing a new disputed question of fact. So far the submission of the learned counsel for the petitioners that the prayer has already been rejected by the High Court in the writ application is concerned, the same relates to the merit of the amendment sought for. At the time of



hearing of the amendment application, the correctness or otherwise of the amendment sought for cannot be gone into. The merits can be decided only at the time of hearing of the suit.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction and, accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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CAV DATE	
Uploading Date	31.01.2017
Transmission Date	

