

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.31 of 2017

In
Civil Writ Jurisdiction Case No. 8784 of 2015

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Shashi Bhushan Prasad Singh

.... Petitioner

Versus

Lal Babu Ray & Anr.

.... Opposite parties

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Appearance :

For the Petitioner : Mr. Mukesh Kumar No-1

For the Opp.Parties : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 07-04-2017 Heard learned counsel Mr. Mukesh Kumar No.1 on
behalf of the petitioner.

2. This review application has been filed by the
defendant-petitioner for review of order dated 12.04.2016 passed
by this Court in C.W.J.C. No.8784 of 2015.

3. It appears that the aforesaid writ application was
filed by the defendant-petitioner challenging the order dated
02.04.2015 passed by Subordinate Judge-I, Rosera in Title Suit
No.190 of 2011 whereby the amendment application filed by the
plaintiff-opposite party was allowed. After hearing the petitioner
this Court by order dated 12.04.2016 dismissed the writ
application. The petitioner then filed Petition for Special Leave to
Appeal (C) No.22028 of 2016 before the Supreme Court. The
Supreme Court on 05.01.2017 heard the petitioner and passed the



following order:-

“The learned counsel for the petitioner seeks permission to withdraw this petition so as to approach the High Court for filing a review petition.”

Thereafter the petitioner has filed this application for review.

4. The learned counsel for the petitioner submitted that in fact the defendant-petitioner has not transferred any part of the suit property rather the property which has been transferred by the petitioner is outside the subject matter of Title Suit No.190 of 2011. While dismissing the writ application this Court observed that during the pendency of the suit the defendant sold part of the suit property and, therefore, the plaintiff prayed for relief with respect to the same by way of amendment.

5. It may be mentioned here that it is not the case of the petitioner that evidence had been concluded, therefore, the petitioner will be prejudiced. It is not stated either in this review application or in the impugned order passed by the court below nor in the writ application itself. The only point which is raised by the petitioner is that it is wrongly observed that the defendant has sold part of the suit property. So far this submission of learned counsel for the petitioner is concerned, it relates to the merit of the



statements made in the amendment application. The Hon'ble Supreme Court in the case of **Rakesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors. (2006) 4 Supreme Court Cases 385** has held that at the stage of consideration of amendment application the courts are not required to decide the correctness or otherwise of the statements made in the amendment application. The court cannot prejudice the facts alleged in the amendment application or reply thereto at the time of consideration of the amendment application. The same shall be decided at the time of final hearing. This is the view taken by the Supreme Court in **(2008) 17 Supreme Court Cases 671**. Now, therefore, whether the defendant-petitioner has sold part of the suit property or not is a question of fact. The court is not expected to decide this at the time of hearing of the amendment application.

6. So far prejudice is concerned, as stated above, it is not the case of the petitioner that evidence has already been concluded. The Hon'ble Supreme Court in the case of **Rajkumar Gurawara Vs. S.K. Sarwagi and Company Private Limited and Another (2008) 14 Supreme Court Cases 364** has held that a pre-trial amendment can be allowed liberally as the opposite party would not be prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the present case,



it appears that the amendment allowed by the court below is a pre-trial amendment.

7. Recently the Hon'ble Supreme Court in the case of **L.C. Hanumanthappa Vs. H.B. Shivakumar, (2016) 1 Supreme Court Cases 332** has held that all amendments should be allowed, if it satisfies two conditions. Firstly, if it is necessary for determination of the real controversy between the parties and secondly, if it works no injustice to the other side. Therefore, the trial court has allowed the amendment application which is within the jurisdiction of that court and accordingly, there is no error apparent on the face of order passed by this court while dismissing the writ application.

8. Thus, in my opinion, no case for review is made out and accordingly, this review application is dismissed.

(Mungeshwar Sahoo, J)

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