

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.398 of 2016

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Dhanpati Devi

.... Appellant/s

Versus

Laljhari Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kr Singh No. 6

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 3 22-02-2017 **1.** Heard the learned counsel for the petitioner.
- 2.** Perused the impugned order dated 05.05.2016 passed by learned Munsif, Aurangabad in Title Suit No.67 of 2003 / C.I.S. No.1240 of 2013 whereby the learned Court below has rejected the amendment application filed by the plaintiff-petitioner.
- 3.** From perusal of the impugned order, it appears that two applications were disposed of by the impugned order. One application was filed by the defendant-respondent for initiating criminal proceeding against the plaintiff-petitioner on the ground that without permission of the Court, the plaintiff has written 7 decimal in Schedule 'B' of the plaint. This application was rejected by the trial Court by the same order and by the same order, the amendment application filed by the plaintiff for giving the area of the disputed land in Schedule 'B' of the plaint. The



Court below rejected this amendment application on the ground that the suit is at the stage of hearing.

4. It appears that against that part of the order whereby the application filed by the defendant-respondent to initiate a criminal proceeding has been rejected, the defendant respondent filed this Civil Misc. application No.485 of 2016. The said Misc. application has already been dismissed by this Court on 01.09.2016. Against part of the order whereby the amendment has been refused, this Civil Misc. application has been filed. It appears that while rejecting the application filed by the defendant, the Court below held that there is nothing on record to show that who interpolated in Schedule 'B', therefore, it will be deemed that the portion shall not be read in Schedule 'B'.

5. In view of the above facts and circumstances of the case now only the question is whether the plaintiff is entitled to amend his pleading to the effect that area of Schedule 'B' land is 7 decimal. It is admitted fact that so far area of 7 decimal is concerned, it is mentioned in most of the paragraphs of the plaint. In the Schedule 'B' also the boundary has been given. Only therefore, now by inserting the area of 7 decimal in Schedule 'B' the defendant will not be prejudiced. It appears to be a formal



amendment application because of typing mistake.

6. In such circumstances, in my opinion, the Court below has wrongly refused to allow the amendment application and thereby refused to exercise a jurisdiction vested in it by law.

7. Accordingly, this Civil Misc. Application is allowed. That part of the impugned order is set aside. The amendment application filed by the plaintiff-petitioner is allowed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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