

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.38 of 2017**

=====

Baikunth Prasad Manjhi @ Bakunt Prasad Manjhi

.... Appellant/s

Versus

Dr. Sri Randhir Bahadur Singh & Anr

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ambuj Nayan Chaubey

For the Respondent/s : Mr.

=====

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 18-01-2017 **1.** Heard the learned counsel, Mr. K. N. Chaubey, for the
petitioner.

2. Perused the impugned order dated 27.09.2016 passed by
Sub Judge II, Purnea in Title Suit No.67 of 2009 whereby the
learned Sub Judge Purnea has allowed the amendment application
filed by the plaintiff-respondent. The plaintiff respondent filed the
suit for specific performance of contract against the two brothers
of defendant No.1 and 2.

3. It appears that the defendant not compromised with the
plaintiff and then compromise application was filed. Therefore,
the plaintiff filed amendment application seeking amendment in
the plaint informing the Court about this subsequent development
and on the basis of this compromise, the defendant No.1 sold his
half part share in the suit property and, therefore, he sought that



the schedule of the plaint also be amended. The Court below by the impugned order has allowed the amendment application holding that it is necessary for just determination of the controversy between the parties.

4. According to the learned senior counsel, Mr. K.N. Chaubey, the amendment could not have been allowed because the agreement to sell is said to have been entered by both the brothers, i.e., the petitioner and the defendant No.1-respondent herein. According to the compromise which is collusively compromise with a view to deprive the present petitioner from the valuable properties, the defendant No.1 has sold portion of the suit property. When there had been no partition between defendant No.1 and defendant No.2 there is no question of selling part of the half share of the defendant No.1 arises. The amendment sought for by the plaintiff is mala fide and that now on the basis of illegal collusive sale deed, the plaintiff is trying to amend the schedule of the plaint by deleting the property which he has purchased from the defendant No.1. The Court below has not at all considered these aspects of the matter and for deciding this fact, evidence is not necessary. If the schedule is amended and part of the property is deleted then the suit itself will be dismissed because the agreement has been entered into jointly by the defendants for



transfer of the entire suit property but now according to the amendment, if the property purchased by the plaintiff from defendant No.1 deleted then the suit for specific performance will remain with respect to the half of the suit property.

5. As has been admitted by learned senior counsel at the time of hearing of this Civil Misc. application only the evidence of the plaintiffs have been concluded and the defendant is yet to start his evidence. Therefore, the defendant-petitioner has got the opportunity to rebut the case of the plaintiff as sought for and he can file additional written statement to the amendment sought for. So far the submission of the learned senior counsel regarding the mala fide intention or that the collusive sale deed has been executed or that the suit is not maintainable with respect to only half portion of the suit property and that valuable property have been sold by the defendant No.1 and that the road side properties have been purchased by the plaintiff or that there had been no partition between the two brothers are concerned, it may be mentioned here that all these questions are on merit of the amendment sought for.

6. The Hon'ble Supreme Court in the case of ***Rajesh Kumar Agrawal vs. K.K. Modi (2006) 4 SCC 385*** has held that



‘while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or otherwise of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment.’

7. Again the Hon’ble Supreme Court in the case of ***Lakha Ram Sharma Vs. Balar Marketing Private Ltd. 2008 (17) SCC 671*** has held that ‘it is settled law that while considering whether the amendment is to be granted or not, the Court does not go into the merits of the matter and decide whether or not the claim made therein is bona fide or not. That is a question which can only be decided at the trial of the suit. It is also settled law that merely because an amendment may take the suit out of the jurisdiction of this Court is no ground for refusing that amendment.

8. The Hon’ble Supreme Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Ors. 2009(10)SCC 84*** has held that ‘the Courts has very wide discretion in the matter of amendment of pleading. The Court must not refuse bona fide legitimate, honest and necessary



amendment. So far prejudice to the petitioner is concerned, it may be mentioned that still the evidence of the defendant petitioner has not started.'

9. The Hon'ble Supreme Court in the case of **Raj kumar Gurawara Vs. M/S. S.K.Sarwagi (2008) 14 SCC 364** has held that 'in case of amendments, after the commencement of trial, particularly after completion of the evidence, the question of prejudice to the opposite party may arise and in such an event, it is incumbent on the part of the Court to satisfy the condition prescribed in Proviso to Order 6 Rule 17 CPC.' Here, as stated above, the evidence of the petitioner has not yet been started.

10. The Hon'ble Supreme Court **(2016) 1 SCC 332 L.C. Hanumanthappa Vs H. B. Shivakumar** has held that 'all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, (b) of being necessary for the purpose of determining the real questions in controversy between the parties.' In the present case, the plaintiff filed the amendment application bringing the facts of subsequent development, i.e., during the pendency of the suit, there has already been compromise between the plaintiff and defendant No.1 and defendant No.1 has already sold the properties by



executing registered sale deed. Therefore, on the basis of this fact, the plaintiff wanted to amend the schedule of the plaint. In such view of the matter, there is no question of prejudice to the petitioner arises and since it is subsequent development, it requires to be noticed by the Court and the plaintiff brought notice to Court and a compromise application has also been filed. It may be mentioned here that the suit is not being disposed of on the basis of the compromise and, therefore the defendant-petitioner may file an additional written statement to the amended portion only.

11. In view of the above facts and circumstances of the case and the settled law of the Hon'ble Supreme Court, I do not find any reason to interfere with the impugned order as it neither suffers from jurisdictional error nor it is irrational nor it has been passed in the manner not permitted by law.

12. Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--

