

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.281 of 2016

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1. Parma Prasad
2. Sharma prasad
3. Bhrigun Prasad
4. Bachchi Devi
5. Gayatri Devi All are Sons and Daughter of Late Indrasan Prasad null
6. Raghu Prasad Son of mangal Prasad
7. Babuchand Prasad Son of Jang Lal prasad
8. Bhadai Prasad
9. Inar Prasad Both sons of Late Baharan Prasad null
10. Megh Nath Prasad
11. Ganesh Prasad Both sons of late Narsingh Prasad All are resident of Village - Sher Tola Bhoj Hata, Pragana Dangsi, P.S. Sidhwaliya, District - Gopalganj.

.... Petitioners

Versus

1. Alok Rai Son of Lte Ram Chandra Rai
2. Kanhaiya Prasad
3. Baban Prasad Both sons of Nayan Prasad
4. Amar Prasad Son of Shiv Prasad
5. Prabhawati Devi W/O Shiv Prasad
6. Dhurendra Prasad Son of Harihar Prasad
7. Laichi Devi Wife of Dhurendra Prasad All residents of village - Sher Tola Bhoj Hata, Pragana Dangsi, P.S. Sidhwaliya, District - Gopalganj

.... Respondents

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Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary, Adv.

For the Respondent/s : Mr. Umesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-05-2017

Heard the learned counsel for the parties.

The legal sustainability of the impugned order by which the learned court below has allowed the prayer for amendment in the written statement as the stage of argument has been questioned by the petitioner.

The matrix of facts discloses that the suit was filed



by the plaintiff- petitioner for declaration of title and confirmation of possession over the suit land . The defendants in the written statement came out with the case that there had been mortgage of the suit land in favour of the predecessor of the defendants by the predecessor of the plaintiff and in that way they resisted the grant of relief as prayed by the plaintiffs. However, when the suit reached at the stage of argument, the petition for amendment was filed on behalf of the defendants wherein they, for the first time, came out with the case that the suit property was auction sold much earlier in the year 1999 itself in execution of decree in another suit. The learned court below after hearing the parties has held that the amendment is necessary for determination of the controversy between the parties and therefore has passed the impugned order allowing the amendment.

Learned counsel for the petitioner has submitted that the learned court below has committed gross illegality in allowing the prayer for amendment at the stage when the suit was posted for argument. It has been contended that there has been no explanation at all on behalf of the defendants for not preferring the amendment at earlier stages of the suit and there is also no case on behalf of the defendants that the defendants had no knowledge of the said fact regarding the auction sale of the suit property. Learned counsel for the petitioners has emphasized that there had been several decisions by



the apex court and this Court whereby the amendment at a late stage has been turned down and the particular reference has been made to the amended provision of Order 6 Rule 17 C.P.C. requiring the party to establish due diligence in not preferring the amendment at earlier stages before making the prayer for amendment.

Learned counsel for the respondents however has supported the impugned order.

After considering the submissions on behalf of the parties and the materials on record as well as the impugned order, it is limpid that the core issue in the suit is the respective claim of title by the plaintiffs and the defendants over the suit property. Earlier the defendants had come out with the case of mortgage in their favour by the predecessor of the plaintiffs, but by the proposed amendment, the defendants have changed their stand and have come out with the case that the suit property was auction sold in Case No.1089/1918 by order dated 11.02.1919. It however transpires after considering the nature of the proposed amendment that the said amendment has direct bearing upon the real controversy arising in the suit between the parties, inasmuch as, if the defendants succeed in establishing the said auction sale in an earlier proceeding, the plaintiff would be non-suited, and in case of failure of the defendants to establish the said fact, the plaintiffs would be entitled to the decree as prayed.



The purpose of amendment as enshrined in Order 6 Rule 17 C.P.C. is no more res integra and it is well settled that all the amendments for determination of the real controversy arising in the suit between the parties be allowed. In fact the “real controversy test” has been recognized by the apex court in the case of ***Rajesh Kumar Aggarwal Vs.K.K.Modi, 2006(4)SCC 385*** where their lordships have ruled that the amendments of such nature should not be denied only on a technical ground. Even otherwise also, the principle is well settled that the amendments in the written statement is to be liberally allowed and the rigours applicable while considering the prayer for amendment in the plaint are not attracted with all force while considering the prayer for amendment in the written statement.

However, the fact in the present case cannot be ignored that the defendants have acted with gross negligence in preferring the amendment in the written statement after much delay and at the fag end of the suit .This Court, therefore, though is not inclined to interdict the impugned order under Article 227 of the Constitution of India so far as it relates to allowing the prayer for amendment but in order to balance the equity, modifies the part of the impugned order whereby the cost of Rs.500/- only has been awarded to the plaintiff and directs that the amendment in written statement is allowed subject to payment of the cost of Rs.5,000/- to



the plaintiff by the defendants within 4 weeks from the date of receipt/production of a copy of this order in the court below.

As the suit has reached to the stage of argument, the learned court below will allow the parties to lead evidence on the limited issue, pertaining to the fact of the auction sale as incorporated by way of amendment and thereafter expeditiously dispose of the proceeding of the suit preferably within a period of 6 months from the date of receipt/production of a copy of this order.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.05.2017
Transmission Date	

