

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12580 of 2013

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Akhilesh Kumar Mishra & Ors.

.... Petitioner/s

Versus

Smt. Kanti Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Null

For the Respondent/s : Mr. Null

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 09-08-2017 Heard the learned counsel, Mr. Ranjan Kumar Dubey

for the plaintiffs-petitioners and the learned counsel, Mr. Uday

Chand Prasad for the defendant-respondent.

This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners for setting aside the order dated 26.04.2013 passed by Execution Munsif, Muzaffarpur in Title Suit No.141 of 2002 by which he has rejected the petition dated 17.12.2012 filed under Order VI Rule 17 of the C.P.C. for amendment in paragraph 2 of the plaint.

The learned counsel, Mr. R.K.Dubey submitted that by mistake in paragraph 2, adjacent west has been typed in place of adjacent south in 6th line of paragraph 2 of the plaint which is contrary to Schedule I to the plaint. The mistake could be detected at the time of argument of the case, therefore, the amendment application was filed. The court below rejected the same on the



ground that it is not the typing mistake and the proviso to Order VI Rule 17 C.P.C. prohibits allowing of amendment at the stage of hearing of the suit. According to the learned counsel, it is only a typing mistake and no fact is sought to be amended. “West” is only to be substituted by “South” which will never prejudice to the other side.

On the other hand, the learned counsel for the respondent vehemently opposed the prayer and submitted that a valuable right has accrued to the defendant-respondent and the defendant-respondent has already filed written statement controverting the case of the plaintiff made in paragraph 2 of the plaint. Now if the amendment is allowed then it will cause prejudice to the respondent and moreover, proviso to Order VI Rule 17 C.P.C. prohibits amendment after commencement of trial and in the present case substantial arguments have been advanced by the parties and only reply is to be given by the defendant-respondent. Thus, the writ application be dismissed.

Perused the amendment application which is annexure 3 to this writ application. From perusal of the proposed amendment, it appears that the only word to be substituted as “south” in place of “west” in paragraph 2 of the plaint. From perusal of the impugned order, it appears that the court below



decided the amendment application on merit and recorded a finding that it is not a typing mistake. The court below also considered proviso to Order VI Rule 17 C.P.C. and then rejected the amendment application.

The Hon'ble Supreme Court in the case of **L.C. Hanumanthappa v. H.B. Shivakumar, AIR 2015 Supreme Court 3364 = (2016) 1 Supreme Court Cases 332** has held that “all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties.” In the present case, the court below instead of deciding as to whether the amendment is necessary for determination of the real controversy between the parties has decided the amendment application on merit particularly when the petitioner is saying that by mistake in place of south it has been typed as west and if it is substituted by the direction south, how it will prejudice the other side is not clear.

So far the proviso to Order VI Rule 17 C.P.C. inserted by way of C.P.C. Amendment Act No.22 of 2002 with effect from 1st of July 2002 is concerned, it may be mentioned here that the present suit was filed in June, 2002 and, therefore, in view of the decision of the Supreme Court **(2007) 1 Supreme Court Cases**



765 and **(2009) 12 Supreme Court Cases 689**, the proviso to Order VI Rule 17 C.P.C. shall not apply in the pleadings filed prior to the amendment.

Thus, the learned court below has wrongly refused to exercise a jurisdiction vested in it by law and if it is not allowed, it will lead to multiplicity of proceedings or shall cause prejudice to the plaintiff-petitioner and not to the defendant-respondent.

Accordingly, this writ application is allowed. The impugned order is set aside and the amendment application filed by the plaintiff-petitioner is allowed.

(Mungeshwar Sahoo, J)

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