

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12301 of 2010

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Jaleshwar Prasad Singh & Ors

.... Petitioner/s

Versus

Smt. Rani Verma & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Saghir Ahmad

For the Respondent/s : Mr. (Gp20)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 11-10-2017 The State of Bihar is not party to the suit, therefore, the name of the State of Bihar is deleted from the cause title of this writ application.

Heard the learned counsel, Mr. Shailendra Kumar Dwivedy for the petitioners and the learned counsel, Mr. Manoj Kumar Manoj for the respondents.

This writ application under Article 227 of the Constitution of India has been filed by the defendants-petitioners for setting aside the order dated 10.05.2010 passed by the learned Sub Judge I, Muzaffarpur in Title Suit No.446 of 2005 whereby the learned Court below rejected the amendment application filed by the defendants-petitioners.

The learned counsel for the petitioners submitted that at the time of filing the written statement neither the petitioners nor the Advocate has gone through the sale deed attached with the



plaint properly as the written statement was filed in hurry. When the evidence of the defendants started the sale deed was examined properly and then it was found that amendment is necessary in the written statement, therefore, the defendants filed the amendment application. The court below rejected the said application on the ground that it will change the nature of the suit.

On the other hand, the learned counsel appearing on behalf of the plaintiffs-respondents submitted that evidence of the plaintiffs has already been closed and the defendants have also examined one witness and at this stage without giving any explanation as provided under proviso to Order VI Rule 17 C.P.C., the amendment application was filed by the defendants-petitioners bringing entirely new fact in the written statement, therefore, the learned court below has rightly rejected the amendment application. If the amendment is allowed then it will amount to de novo trial because unless opportunity is granted to the plaintiffs to deny the case, the plaintiff will be prejudiced. Moreover, unless the Court come to the conclusion that the delay has been properly explained by the defendants, the Court has no jurisdiction to allow the amendment application.

Perused the impugned order. Admittedly, the evidence of the plaintiffs has already been closed. So far explanation as



provided under Proviso to Order VI Rule 17 is concerned, the only explanation given by the defendants-petitioners is that at the time of filing written statement, properly the contents of the sale deed were not examined.

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 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 conditions prescribed in the proviso to Order 6 Rule 17 C.P.C. If the parties to the proceeding are able to satisfy the Court that in spite of due diligence they would not raise the issue before the commencement of trial and the Court is satisfied with their explanation, amendment can be allowed even after commencement of the trial and not otherwise.

In view of the settled principles of law, it was the duty of the defendants to have satisfactorily explained that in spite of due diligence the petitioner could not raise the issue before the commencement of trial. The explanation given by the petitioners has already been negated by the trial court. In such circumstances, even if second view is possible, the High Court



cannot take the second view for the purpose of supervising the order passed by the trial court.

So far amendment, as prayed for in clause (b) of the amendment application is concerned, it appears that it is the fact which took place during the pendency of the suit and it is settled law that the court can look into the subsequent event and, therefore, so far that part of the amendment i.e. clause (b) is concerned, it is allowed. However, so far clause (a) is concerned, it is rejected as no case for interference in supervisory jurisdiction is made out.

Accordingly, this writ application is allowed in part. The amendment sought for regarding clause (a) is concerned, it is rejected and regarding clause (b) is concerned, it is allowed. The impugned order is modified, clause (a) is rejected and clause (b) is allowed.

(Mungeshwar Sahoo, J)

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