

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6479 of 2014

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1. Tanvir Imam Son Of Late Syed Nemat Imam
2. Syed Naqui Imam (Wrongly Named As Kaumi Mian) Son Of Late Syed Nemat Imam
3. Syed Khalid Imam (Wrongly Named As Baua Jee) Son Of Late Syed Nemat Imam
4. Athari Imam (Wrongly Named As Tarhari Imam) Wife Of Late Syed Nemat Imam. All Residents Of Village - Ishapur, P.S. - Phulwari, District - Patna

.... Petitioner/s

Versus

1. Ram Chandra Rai Son Of Late Ram Charitar Rai All Residents Of Village - Ishapur, P.S. - Phulwari, District - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. J.S. Arora, Sr. Adv with Mr. Manok Kr. Adv

For the Respondent/s : Mr. J.K. Verma, Adv & Mr. Anjani Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-01-2017

Heard Mr. J.S. Arora, learned senior counsel for the petitioners and Mr. J.K. Verma, learned counsel appearing for the respondent.

The legal acceptability of the impugned order by which the learned court below has allowed the prayer of the plaintiff for amendment in the plaint has been questioned in this application under Article 227 of the Constitution of India.

The T.S. No. 07 Of 1994 was filed by the plaintiff-respondent for declaration of right, title and interest over the suit property which is 9 decimals of land out of 54 decimals of land of



Plot No. 4146. According to the averments made in the plaint (Annexure-5) the suit plot originally belonged to Ghamandi Rai and after his death the suit plot was allotted in partition among his three sons, to one of his sons namely Phagu Gope. It has been further asserted that Phagu Gope had executed a registered sale deed dated 12.02.1952 in favour of the two sons of his brother Sukhu Rai who after the purchase came in actual physical possession of the purchased suit plot having area 54 decimals. It has been further case of the plaintiff that subsequently they sold the land in question to the father of the plaintiff by a registered sale deed dated 31.05.1960 and after partition among his brothers, after the death of his father, the plaintiff has been allotted the suit plot.

The defendants-petitioners filed the written statement (Annexure-6) asserting inter alia that originally the said plot No. 4146 measuring 54 decimals was in possession of Phagu Gope and Kanhai Gope on batai system but later on they surrendered those batai lands to the landlords and his family members who came in possession thereafter. The defendants, after giving facts in detail have traced their title to the landlords in whose favour the surrender was said to have been made. The defendants have also denied the assertions of the plaintiff in the plaint and have asserted that Phagu Gope had not right of sale and in fact he did no sell the suit land in



favour of the vendors of the plaintiff's father and have further specifically taken the stand in paragraph no. 17 of the written statement that the two sons of Sukhu Rai never derived any title over the suit land either under the sale deed or by inheritance.

During the pendency of the suit, the plaintiff filed a petition on 23.01.2014 praying for amendment in the plaint. From the perusal of the amendment petition (Annexure-2) it transpires that the substantial amendment as prayed by the plaintiff is the incorporation of the fact in the plaint, after deletion of the earlier statement to the contrary, that the vendor of the plaintiff did not acquire the suit land by sale deed dated 12.2.1952 from Phagu Gope and the suit land was the ancestral maurusi land of the vendors of the plaintiff which they have sold to the father of the plaintiff.

By the impugned order the learned court below after hearing the parties and considering the facts and circumstances of the case has come to the conclusion that the proposed amendment would not change the nature of the suit and has allowed the prayer for amendment after imposing cost upon the plaintiff and giving opportunity to the defendants to make replication amendment of the written statement.

Mr. Arora, learned senior counsel for the petitioners, has at the output emphasized the fact that the proceeding of the suit was on



the verge of conclusion where the evidence of the parties was complete and only the argument was to be completed when the amendment in question has been allowed. It has been contended that the proposed amendment by the plaintiffs would change the entire basis of their case and would demonstrably lead to a de novo trial. It has also been canvassed that there is no explanation at all on behalf of the plaintiffs for not preferring the amendment at the earlier stages of the suit and learned court below has acted in a mechanical manner in allowing the prayer for amendment. Referring to the assertions made in the plaint and the deposition by the plaintiff (as annexed with the supplementary affidavit) it has been argued that throughout the proceeding of the suit the plaintiff has been pursuing the case as pleaded in the plaint but after the completion of the evidence on behalf of the parties a surprise has been thrown by the plaintiff upon the defendant seeking to introduce new fact by way of amendment. It has also been propounded that the impugned order cannot be legally sustained either on principle or on precedent.

Mr. Verma, learned counsel appearing for the plaintiff-respondent has submitted that the learned court below has committed no error in coming to the conclusion that the proposed amendment would not change the nature and scope of the suit. Elaborating the submissions it has been contended that by sale deed



dated 31.03.1960 (Annexure-9 to the Supplementary Affidavit), the plaintiff's father has purchased two properties including the suit property about which there is clear recital also in the sale deed that the same was the share of the vendors in their ancestral property having Batai Kaimi interest. It has been emphasized that the proposed amendment do not at all take the defendants by surprise and will also not alter the main defence of the defendants as raised in the written statement that Phagu Gope had no title over the suit land. It has been propounded that proviso to Order 6 Rule 17 C.P.C could not be attracted in the present case as the suit has been filed in the year 1994, and in any view of the matter it is further also explicit from the facts that the amendment as allowed by the impugned order is necessary for determination of the real controversy between the parties. The learned counsel for the plaintiff-respondent has also submitted that though the amendment certainly introduces a new case but procedural law would not stand in the way of doing substantial justice to the parties.

Learned counsel for the parties in support of their submissions have relied upon a number of decisions which shall be appropriately noticed hereinafter.

From the facts of the case as aforementioned, it is pellucid that the crucial note of disharmony between the parties is the claim



of title over the suit plot no. 4146 having area of 54 decimals out of which the suit land consists of an area admeasuring 9 decimals described in the schedule of the plaint. The plaintiff has initially averred in the plaint that the suit plot area 54 decimals was allotted in partition in the share of Phagu Gope who sold the said land by registered sale deed dated 12.02.1952 in favour of the two sons of his brother Sukhu Rai. The plaintiff has claimed that those two sons namely Sita Gope and Hiranman Gope sold the suit land to the father of the plaintiff by registered sale deed dated 31.05.1960 and after partition with his brothers the plaintiff has been allotted the suit land in his share. The defendants in their written statement while denying the assertions of the plaintiff have stated that the suit plot no. 4146 area 54 decimals was in possession of Phagu Gope alongwith Kanhai Gope on Batai but later on they surrendered their Batai lands to the landlords. As noticed above the defendants in paragraph no. 17 have completely denied the right of Phagu Gope to sell the suit plot and further have also denied the title of the two sons of Sukhu Rai either on the basis of the sale deed or by inheritance. It is evincible, therefore, that the core issue between the parties pertains to right, title and interest of Phagu Gope over the suit land either as Bataidar or otherwise in view of the case of the defendants that Phagu Gope was in possession of the suit land as bataidar but he



later surrendered his rights as such to the landlords. It is also noticeable here that the fact has not been denied by the defendants that Phagu Gope died issueless and the vendors of the plaintiff were the two sons of his brother. Moreover the sale deed dated 12.02.1952 (Annexure-8) executed by Phagu Gope in favour of Sita Gope and Hiranman Gope (vendors of the plaintiff) also does not demonstrate that the suit land was also transferred to the vendors of the plaintiff. The backdrop of these facts inevitably lead to the inference that the real controversy between the parties in the suit is with regard to the title over the suit land and by the amendment in question, the plaintiff has sought to change his stand regarding the title of his vendors over the suit land by introducing the case that the suit land was their ancestral maurusi land and not their purchased land as earlier stated in the plaint. But the defendants' defence as raised in the written statement is however total denial of the title of the vendors of the plaintiff either by purchase from Phagu Gope or by inheritance. Though the case introduced by the plaintiff by way of amendment is inconsistent with the earlier case as pleaded but as ruled by three Judges bench of the Apex Court in ***Firm Srinivas Ram vs Mahabir Prasad AIR 1951 SC 177*** that there is nothing in the C.P.C to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative.



Further the principle of 'real controversy test' as elucidated by their lordships *in Rajesh Kumar Aggrawal & Ors vs K.K. Modi & Ors (2006) 4 SCC 385* also supports submissions by learned counsel on behalf of the respondent. It would be fruitful here to take into notice the principle as laid down by their lordships in the aforesaid decision as follows:-

“15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.”

At this juncture, it would be pertinent to notice the submission by learned senior counsel for the petitioners that the amendment has been prayed and allowed at the stage when the suit has been posted for argument. However, it is trite that while



considering the prayer for amendment, it is not the stage of the suit which is material rather it is the nature and scope of the amendment in the facts and circumstances which are material considerations. But even then the wide power unfettered on behalf of the court in allowing the amendment pleadings have been recognized. In this context, the dictum laid down by their lordships in ***Surender Kumar Sharma vs Makhan Singh (2009) 10 SCC 626***, can be befittingly noticed here as follows:-

“5.....so far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment.

6.It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the court must bear in favour of doing full and complete justice in the case where the



party against whom the amendment is to be allowed, can be compensated by costs or otherwise.....”

The jurisdiction of this Court under Article 227 of the Constitution of India cannot be taken as ‘unlimited prerogative to correct all kinds of hardships or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals.’ As observed by their lordships in ***Jai Singh vs M.C.D (2010) 9 SCC 385*** that exercise of this jurisdiction must be within the well recognized constraints and cannot be exercised like a “bull in a china shop” to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. It has been ruled that the correctional jurisdiction under Article 227 of the Constitution of India can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of justice.

For the aforesaid reasons and discussions, this Court is not convinced to align with the submissions on behalf of the petitioners that the impugned order has resulted in miscarriage of justice. This Court has also not been persuaded to hold that the amendment in the plaint as allowed by the impugned order has caused irretrievable prejudice to the case of the defendants as pleaded in the written statement for which delay and laches in making the prayer for



amendment as such could not have been compensated by costs. Accordingly, this Court is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India to interdict the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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