

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.696 of 2012

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Mukesh Das

.... Petitioner/s

Versus

Smt.Urmila Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Advocate.

For the Respondent/s : Mr. Indra Mohan Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

10 11-09-2017 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the minor respondents.

2. This writ application under Article 227 of the Constitution of India has been filed against the order dated 10.02.2009 passed by learned Additional Munsif, Sherghaty in Title Suit No.130 of 2007/73 of 1999 whereby the learned court below rejected the amendment application filed by the plaintiff-petitioner.

3. The learned counsel for the petitioner submitted that while rejecting the amendment application the learned court below has not at all considered the question as to whether the amendment sought for is necessary for decision of the real controversy between the parties and whether it is bona fide or not. The learned counsel further submitted that without considering this fact the court below has gone into the merit and observed that there is no



proof regarding the date and year of death of Ragho Das without giving opportunity to the plaintiff to produce evidence and, therefore, the order is liable to be set aside. According to the learned counsel, the court below has also not applied his mind and observed that the application has been filed at belated stage. The court below has not stated about what is the stage of the case and how the amendment is prejudicial to the defendant.

4. On the other hand, the learned counsel appearing on behalf of the minor respondents submitted that the order passed by the court below is legal.

5. Perused the impugned order and the amendment application.

6. From perusal of the order impugned, it appears that the court below has decided the application on merit. The court below nowhere mentioned as to whether the amendment sought for is necessary or not and how it is prejudicial to the defendant no.1. It is settled principles of law that bona fide amendment should not be rejected if it is necessary for just decision of the controversies between the parties and at the time of deciding the amendment application, the court below should not go into the merit of the amendment sought for. Reference may be made to the decision of the Supreme Court; **(2009) 10 Supreme Court Cases**



84 (Ravajeetu Builders & Developers Vs. Narayanaswami & Sons & Ors., and (2006) 4 Supreme Court Cases 385 (Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others). In the present case, while rejecting the amendment application the learned court below has only observed that it will prejudice the defendant but in what manner and how it will prejudice is not present. Thus, the impugned order is not according to law and if it is allowed to stand, it will occasion failure of justice.

7. In the result, this writ application is allowed. The impugned order is set aside and the matter is remanded back to the court below for passing a fresh order according to law after hearing the parties.

(Mungeshwar Sahoo, J)

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