

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14175 of 2013

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Laxmi Rai @ Latrami Rai & Ors.

.... Petitioner/s

Versus

Smt. Anju Devi & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 09-08-2017 Heard the learned counsel, Mr. Kundan Bahadur Singh
for the petitioners.

The learned counsel for the petitioners submitted that by the impugned order dated 14.05.2013, the learned Sub Judge I, Patna rejected the amendment application filed by the petitioner in Title Suit No.89 of 2010 praying for making correction in the plaint as well as in the schedule of the plaint and also accordingly for correction of the preliminary decree. According to the learned counsel, there were some typing mistake with regard to the area of the subject matter of suit and one of the plots was mentioned twice in the schedule and, therefore, it necessitated the plaintiff to file the amendment application but the learned trial court by a cryptic order without following the particulars for consideration of amendment application and without deciding as to whether the amendment sought for is necessary for just decision of the



controversy between the parties, has rejected the amendment application by observing that the plaintiff is trying to overhaul the plaint itself.

Perused the amendment application which is Annexure 3 to this writ application. It appears that the plaintiff filed the amendment application praying for making necessary correction in the area of the suit plot and also for deletion for one of the plots as it was mentioned twice in the schedule. So far the pleading of the plaintiff that those are typing mistakes is concerned, there is no contrary case was made by the defendants. The court also nowhere observed that those are not typing mistakes.

The Hon'ble Supreme Court in the case of **J. Samuel and Ors. v. Gattu Mahesh and Ors., 2012(1) PLJR 412** Supreme Court has held that the primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its conclusion. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties.



In the said decision, it has been held that if there is mistake it will not come within the purview of the term “due diligence”. In the present case, according to the plaintiffs-petitioners, the mistake was detected after passing of the preliminary judgment. In such circumstances, if the amendment is not allowed then it will certainly occasion failure of justice and shall lead to multiplicity of proceedings between the parties. The court below without considering this aspect of the matter and without considering as to whether it is necessary for deciding the real controversy between the parties has rejected the amendment application by cryptic order.

Thus, this writ application is allowed. The impugned order dated 14.05.2013 passed by Sub Judge I, Patna in Title Suit No.89 of 2010 is hereby set aside and the amendment application filed by the plaintiffs-petitioners is hereby allowed.

(Mungeshwar Sahoo, J)

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