

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1417 of 2016

=====

Chanda Devi

.... Appellant/s

Versus

Kailash Bhardwaj & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Gagan Deo Yadav

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 16-01-2017 Heard the learned counsel for the petitioner and the learned
counsel for the respondent.

Perused the impugned order dated 10.08.2016 whereby the
learned Sub Judge IIIrd, Madhubani has rejected the amendment
application filed by the defendant in Title Suit No.223 of 2011.

It appears that the plaintiff has examined two witnesses in
the case and thereafter this amendment application has been filed
by the defendant on 8.6.2016 praying for addition of a paragraph
to the effect that three daughters of defendant No.2 are necessary
party in the suit and because of their non-joinder, the suit shall fell
(the name of three daughters have been given).

The learned counsel for the petitioner submitted that the
defendant-petitioners are not raising any new fact and the
parentage of the three daughters is not disputed by the defendant
in the reply to the application. The petitioners raised only



question of law, i.e., non-joinder of party but the learned Court below has rejected the application under Proviso to Order 6 Rule 17 CPC.

On the other hand, the learned counsel for the respondent submitted that trial has commenced, therefore, the Court below has rightly rejected the amendment application.

Admittedly, two witnesses have already been examined by the plaintiff and moreover the three persons named in the amendment application are admittedly the daughter of defendant No.2. Whether because of their non-joinder as party defendant, the suit shall fall or not is only a question of law and it is not a question of fact. The petitioners are raising this question of law by way of amendment and moreover the evidence of the petitioners is still going on as such I find that no prejudice will be caused to the plaintiff respondent, if this amendment is allowed

The Hon'ble Supreme Court in the case of *L. C. Hanumanthappa Vs. H.B. Shiva Kumar (2016)1 SCC 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.'

Thus, the Court below has rejected the application in the



manner not permitted by law and thereby refused to exercise a jurisdiction vested in it by law. Accordingly, the impugned order is set aside. The amendment application filed by the defendant petitioner is allowed.

Thus, this Civil Misc. application stands allowed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--

