

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.797 of 2016

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Anil Kumar Singh

.... Appellant/s

Versus

Smt. Tetari Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Kumar Pandey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 22-02-2017 **1.** Heard the learned counsel, Mr. Shashi Kumar Pandey
for the petitioner and the learned counsel, Mr. Anil Kumar Jha, for
the defendant-respondent.

2. At the very outset, the learned senior counsel, Mr. Anil
Kumar Jha, for the respondent submitted that many defendants
who are there in the Court below have not been made party in the
present Civil Misc. application. The respondent No.5 is dead and
his legal representatives have already been substituted in the Court
below in the suit but legal representatives have not been made
party in this Civil Misc. application. According to the learned
senior counsel, therefore, this Civil Misc. application is
incompetent. Had they been made party, he would have appeared
on their behalf also.

3. So far the non-maintainability of this Civil Misc.



application or incompetency of this Civil Misc. application is concerned, it may be mentioned here that the High Court is exercising discretionary jurisdiction under Article 227 of the Constitution of India. Therefore, it is not necessary to hear each and every party who are defendants in the Court below. The learned senior counsel has already appeared on behalf of some of the respondents here. If in fact the legal representatives of the deceased respondents have not been substituted, this matter can be raised before the trial Court regarding the incompetency of the suit. So far this Civil Misc. application is concerned, the High Court has got the jurisdiction to exercise discretionary supervisory jurisdiction suo motu under Article 227 of the Constitution of India.

4. Thus, when the question of law only is involved, it is not necessary to notice all other defendants in the suit.

5. Perused the impugned order dated 25.04.2016 passed by learned Sub Judge, Paliganj, Patna in Title Suit No.73 of 1991 whereby the learned Court below rejected the amendment application filed by the plaintiff-petitioner.

6. It appears that the plaintiff petitioner filed the aforesaid suit for declaration of non-title of the defendant. After adducing



evidences on behalf of both the parties at the stage of argument, the plaintiff-petitioner filed amendment application praying for permission to amend the plaint by introducing the relief for declaration of title of the plaintiff over the suit properties. The Court below without recording any finding that whether the amendment sought for is necessary for determination of the real questions in controversy between the parties rejected the amendment application on the ground that the suit is at the stage of argument and the plaintiff has also prayed the relief which he is now seeking amendment.

7. From perusal of the plaint which is annexed with the counter affidavit filed by the defendant, it appears that there is no relief of declaration of title prayed for by the plaintiff. Therefore it appears that the Court below erroneously held that the plaintiff has already claimed the relief. So far delay is concerned, it may be mentioned here that the suit is of the year 1991, therefore, Proviso to Order 6 Rule 17 CPC is not applicable in view of the decision of the Hon'ble Supreme Court reported in *(2007)1 SCC 765*.

8. Since the plaintiff is claiming amendment in the relief portion, there is no question of prejudice to the defendant arises as



all the facts are pleaded by the plaintiff in the plaint and on the basis of the same, the plaintiff is now claiming relief.

9. The Hon'ble Supreme Court in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and Ors. 2009(10)SCC 84*** has held that 'the Courts have wide discretionary jurisdiction to allow amendment if the amendment sought for is necessary for determination of the real questions in controversy between the parties. Same view has been taken by the Hon'ble Supreme Court in the case of ***L. C. Hanumanthappa Vs. H.B. Shiva Kumar (2016)1 SCC 332*** .

10. In view of the above facts and circumstances of the case, in my opinion, the Court below has wrongly refused to exercise a jurisdiction vested in it by law.

11. Thus, this Civil Misc. application is allowed. The impugned order is set aside. The amendment application filed by the plaintiff-petitioner is hereby allowed.

(Mungeshwar Sahoo, J)

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