

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.203 of 2016**

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Bablu Tiwary

.... Petitioner/s

Versus

Smt. Bharti Mishra

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

4 07-02-2017 Heard the learned counsel, Mr. Ajay Kumar Singh for the petitioner and the learned counsel, Mr. Braj Nandan Kumar Tiwary for the respondent.

Perused the impugned order dated 11.02.2016 passed by Sub Judge 15th, Bhagalpur in Title Suit No.131 of 2008 whereby the learned Court below has allowed the amendment application filed by the plaintiff-respondent.

It appears that the plaintiff-respondent filed the aforesaid suit and prayed that the suit property be declared Rasta and the defendant be permanently restrained from interfering in any manner for use of the Rasta fully described in Schedule B of the plaint. Both the parties concluded their evidences and at the stage of argument, an amendment application was filed under Order VI Rule 17 with full description of Schedule B property. Earlier only khata and khesra number were mentioned. By way of amendment,



now the length and width of the Rasta giving boundary has been described. The court below considering the fact that no new fact is being brought on record and in fact, the amendment sought for is nothing but a full description of the schedule property has allowed the amendment application.

The learned counsel, Mr. Singh for the petitioner submitted that in the written statement, the defendant has clearly denied the allegation of the plaintiff in the plaint that the Rasta exists in plot number 17. At that stage i.e. prior to conclusion of evidences, the plaintiff never filed any amendment application. At this stage, if the order is allowed to stand then it will occasion failure of justice because the petitioner has already denied the case and now the respondent is changing the case by giving details of the suit Rasta. At the time of hearing of the civil miscellaneous application, the learned counsel, Mr. Singh placed paragraph 18 and 19 of the written statement and submitted that the case of the plaintiff about the existence of Rasta has clearly been denied.

On the other hand, the learned counsel, Mr. Tiwary appearing on behalf of the respondent submitted that the plaintiff-respondent is not seeking for amendment for bringing any new fact. In Schedule B, khata and plot number has only been given and the relief has been claimed by the plaintiff for declaration that



the suit property is Rasta. In fact, by mistake, the description of Rasta was not given i.e. the length and width of the Rasta giving the boundary of the same and, therefore, if the order is set aside then the subject matter of the suit will be vague and the Rasta cannot be identified at the spot.

From perusal of the impugned order, it appears that the court below has considered this aspect of the matter that the amendment sought for is in the Schedule only and no new fact is being introduced by way of amendment. So far the stage of argument of the suit is concerned, it may be mentioned here that if the amendment is necessary for just decision of the controversy between the parties then the Courts have the jurisdiction to allow the amendment. In the present case, admittedly, the suit property has been described. Only boundary of the so called Rasta which is prayed for by the plaintiff has not been given. Therefore, there is neither any new fact brought on record nor the defendant will be prejudiced only because the description of the suit property is given in the Schedule. The question as to whether the plaintiff is entitled for declaration or not that may be decided in the judgment by the Court and moreover, for giving the description of the suit Rasta nor further evidence is necessary.

The Supreme Court in the case of **L.C.**



Hanumanthappa v. H.B. Shivakumar, (2016) 1 Supreme Court Cases 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.”

The court below has clearly recorded the finding that the amendment is necessary for the decision of the real controversy between the parties. Thus, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction.

Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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