

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.687 of 2017

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Umesh Chandra Singh Son of Braj Kishore Singh, Resident of Village-Bhawanipur
Jirat, P.S. Chhatauni, P.O. Motihari District East Champaran.

.... Petitioner .

Versus

1. Neeraj Kumar Son of Birendra Singh Resident of Village-Saraiya P.S. Kotwa,
P.O. Saraiya District East Champaran.
2. Nilu Kumari, Wife of Neeraj Kumar Singh, and daughter of Suresh Singh,
Resident of Village-Saraiya, P.O. Saraiya P.S. Kotwa, District Est Champaran.
3. Anil Kumar
4. Manoj Kumar Sinha Sons of Herendra Kishore Singh, Resident of Village-P.O.
and P.S. Mashrakh, District Saran.
5. Dr. Harendra Kishore Singh, Son of Babu Ramdev Singh, Resident of Village-
Gangawali, P.O. Masrakh P.s. Mashrak, District Saran
6. Krishna Kumar, Son of Ram Chandra Tiway, Resident of Village-Chandmari,
P.O. Motihari, P.S. Motihari Town, District East Champaran.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Navin Nikunj
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 31-07-2017

Heard Mr. Nagendra Rai, learned counsel
appearing for the petitioner.

By the impugned order the learned court below
has allowed the prayer of the defendant 2nd set for amendment
in the written statement.

The suit has been filed by the plaintiff-
petitioner praying for specific performance of contract on the
basis of an agreement for sale. The plaintiff's evidence was led in
part and at that stage the defendant 2nd set filed the petition



praying for amendment in his written statement. The perusal of the amendment petition (Annexure-4) discloses that the prayer was made to incorporate the facts regarding the antedating of the deed of agreement for sale and incorporating other facts having bearing upon its genuineness. By the impugned order, the learned court below has allowed the prayer for amendment as prayed.

Mr. Nagendra Rai, learned counsel for the petitioner has submitted that the prayer for amendment is clearly in the teeth of the proviso to Order 6 Rule 17 C.P.C. as no due diligence has been disclosed. Elaborating his submission, it has been contended that in the proposed amendment itself the defendant 2nd set has accepted to have got the relevant knowledge of the fact, sought to be incorporated by way of amendment, on 20.02.2016 but the amendment petition has been filed on 28.11.2016 and therefore the element of due diligence is clearly absent. Learned counsel for the petitioner has relied upon the decision of the apex court in the case of **J.Samuel Vs. Gattu Mahesh , 2012(1) PLJR SC 412.**

Per contra, learned counsel for the respondent no.1 has submitted that the amendment as prayed will not change the nature or scope of the suit and is relevant for determination of the core issue arising in the suit. It has also been contended that the criteria for considering the prayer for



amendment in the plaint and the amendment in the written statement is different and in this regard, has relied upon the decision in the case of **Sushil Kumar Jain Vs. Manoj Kumar, 2009(4)PLJR SC 69.**

After considering the submissions and the perusal of the materials on record, it is manifest that the suit has been filed for specific performance of contract on the basis of the agreement for sale. The legality and validity of the deed of agreement for sale has been contested by the defendants and by the proposed amendments some facts have been sought to be introduced which might have bearing upon genuineness of the said deed. Though the proviso to Order 6 Rule 17 C.P.C. envisages the establishment of due diligence on the part of the party praying for amendment after the commencement of trial, but the apex court in the case of **Rajesh Kumar Aggarwal Vs. K.K.Modi,(2006)4 SCC 385** has laid down “the real controversy test” and has held that all amendments which are necessary for decision of the real controversy should normally be allowed. The same view has been reiterated in **Surendra Kumar Sharma Vs. Makhan Singh,(2009)10 SCC 626** emphasizing the consideration of doing complete justice in the matter. Recently in **Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria , (2015)10 SCC 203** the apex court while considering the issue with regard to delay in the prayer for amendment in



the written statement has laid down that the delay is not a factor to be given undue importance while considering the prayer for amendment in the written statement. In the opinion of this Court, the proposed amendments are necessary for determination of the real controversy between the parties on the issue of genuineness of the deed of agreement for sale in question and in that view of the matter this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

This application is accordingly dismissed.

It goes without saying that the plaintiff shall be entitled to pray for the consequential amendment in the plaint in accordance with law and if such prayer is made, the learned court shall consider the same in accordance with law.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2017
Transmission Date	

