

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.314 of 2016

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Ram Binay Chaudhari son of Chhatri Chaudhari resident of village - Barharwa,
Anchal - Gaunaha, Police Station - Matiarua, District - West Champaran.

.... Appellant/s

Versus

1. Ramagya Manjhi son of Late Bhikhari Manjhi
2. Hari Kishore Paswan son of Ramgya Manjhi Both residents of village -
Barharwa, Post - Sherwa Masjidwa, Police Station - Matiarua, Anchal -
Gaunaha, District - West Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiv Kumar Dwivedy, Adv.

For the Respondent/s : Mr. Binay Kant Mani Tripathi, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-03-2017

Heard Mr. S.K. Dwivedy, learned counsel for the
petitioner and Mr. B.K.M. Tripathi, learned counsel for the
respondents.

The legal sustainability of the impugned order by which
the learned court below has rejected the prayer of the plaintiff-
petitioner for amendment in the plaint has been questioned in this
application under Article 227 of the Constitution of India.

The matrix of facts discloses that the Title Suit No. 51 of
2014 has been filed by the plaintiff-petitioner for declaration of title
and confirmation of possession along with consequential reliefs.
During the pendency of the suit, a petition under Order 6 Rule 17



C.P.C. was filed on behalf of the plaintiff-petitioner on 21.12.2015 praying for amendment in the plaint. The said petition has been brought on record as Annexure-3 of this application from which it transpires that by amendment, the plaintiff has prayed to incorporate the statements regarding the earlier ex parte decree passed in T.S. No. 04 of 1993 and seeking the relief against the said ex parte decree. The defendants in the suit contested the prayer for amendment as made by the plaintiff by filing a reply (Annexure-4) wherein in paragraph-5 the definite stand was taken that the plaintiff's father namely Hari Chaudhary had filed Misc. Case. No. 07 of 1997 for setting aside the ex parte decree but the said miscellaneous case was also dismissed for default. On the basis of this averment, the defendants made out the case that the relief as sought for by the present plaintiff against the ex parte decree passed in T.S. No. 04 of 1993 was legally not tenable. By the impugned order, the learned court below, squarely relying upon the aforesaid statement, has turned down the prayer of the plaintiff-petitioner for amendment in the plaint.

A supplementary affidavit has been filed on behalf of the petitioner wherein the plaint of T.S. No. 04 of 1993 has been annexed in order to demonstrate that the father's name of the present petitioner is Chhatri Chaudhary and not Hari Chaudhary. Further, it has also been demonstrated that Hari Chaudhary was the defendant no. 12 in



the said T.S. No. 04 of 1993 and any petition/miscellaneous case filed by the said Hari Chaudhary was not within the knowledge of the present plaintiff-petitioner and the same could not have been a ground for rejection of the prayer for amendment as made by the plaintiff-petitioner.

Mr. Tripathi, learned counsel for the respondents has not contested the fact that the father's name of the plaintiff-petitioner is Chhatri Chaudhary and not Hari Chaudhary. In sequence, it has also been accepted that the Misc. Case. No. 07 of 1997 for setting aside the ex parte decree was filed by Hari Chaudhary and not Chhatri Chaudhary.

Considering the submissions and the materials on record, the conclusion is irresistible that the learned court below has rejected the prayer of the plaintiff-petitioner on the basis of the plea taken in paragraph-5 of the reply filed by the respondents as defendants in the suit which was factually incorrect in toto. The fact is also apparent that the present plaintiff-petitioner was the defendant no. 9 in T.S. No. 04 of 1993 in which an ex parte decree is said to have been passed. There is also no material before this Court nor there is any finding by the learned court below that the present petitioner had the knowledge of the ex parte decree passed in T.S. No. 04 of 1993 though the submission has been made by learned counsel for the respondents that



this petitioner at one stage appeared in the said suit. In the background of the aforesaid facts and submissions, this Court is convinced that the learned court below has committed illegality in rejecting the prayer for amendment as prayed by the plaintiff-petitioner. The purpose of provision of Order 6 Rule 17 C.P.C. is no more res integra and it is well settled that all amendments which are necessary for determination of the real controversy between the parties should be allowed. This Court, therefore, is inclined to allow the present application.

Accordingly, the present application is allowed and the impugned order is quashed. The prayer of the plaintiff-petitioner as made in the petition dated 21.12.2015 (Annexure-3) is allowed. It is, however, clarified that the observations made in this order shall not in any manner prejudice the case of either of the parties to the suit. The learned court below is further directed to proceed expeditiously in accordance with law.

(V. Nath, J)

Devendra/-

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