

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14544 of 2013

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Ashok Kumar Singh @ Vijay Singh

.... Petitioner/s

Versus

Smt. Madhuri Dhari Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sangeeta Sharma

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 09-08-2017 Heard learned Senior Counsel Mr. S.S. Dwivedi for the petitioner and learned counsel Mr. B.K. Singh Chauhan as well as learned counsel Mr. Kundan Bahadur Singh appearing on behalf of the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner against part of the impugned order dated 16.04.2013 passed by Subordinate Judge-X, Patna in Title Partition Suit No.461 of 2004 whereby the learned Subordinate Judge has rejected the amendment prayed for by the plaintiff in part and allowed the other part.

3. The learned Senior Counsel for the petitioner submitted that the amendment sought for by the plaintiff is pre-trial amendment i.e. on the date of passing the impugned order the trial had not commenced and, therefore, there was no question



of prejudice to the other side arises but the court below rejected the amendment which was necessitated because of subsequent event i.e. which occurred after the death of the father (defendant no.1). The learned Senior Counsel further submitted that the petitioner was junior member, therefore, had no knowledge about the details of the joint family property. He subsequently knew the other properties on the basis of various sources mentioned in the amendment application, therefore, he prayed for addition of those properties as subject matter of the partition suit which was also rejected by the trial court without considering that the amendment sought for is pre-trial amendment and the defendant will get opportunity to meet the case pleaded by the plaintiff.

4. On the other hand, the learned counsels for the respondents submitted that in fact the plaintiff admitted that there had been partition in the year 1969 but in the amendment application after admitting partition in the year 1969 he stated that the said partition will not affect the right of the plaintiff as on the date of partition the plaintiff was minor and if now the amendment is allowed then naturally it will cause prejudice to the defendant because once there had been partition, the property vested on the share of the person in whose favour the property was allotted. Now, therefore, the plaintiff cannot be allowed to



say that because he was minor then partition will not affect the plaintiff. In such circumstances, the court below has rightly rejected the amendment partly prayed for by the plaintiff-petitioner.

5. Admittedly the trial had not commenced on the date of passing of the impugned order. From perusal of the impugned order, it appears that the court below has only stated that if the amendment allowed then it will amount to withdrawal of the admission made by the plaintiff. Nowhere in the impugned order, it is mentioned that what is admission made by the plaintiff in the plaint which he is now trying to withdraw by way of amendment. From perusal of the amendment application and plaint, it appears that the plaintiff earlier claimed 1/3rd share in the suit property but subsequently after the death of father he claimed 1/2 share in the property. This cannot be said that he is now trying to withdraw the admission. It is only a subsequent event and the courts have the jurisdiction to take into consideration the subsequent event and mould the relief accordingly.

6. The Hon'ble Supreme Court in the case of **Rajkumar Gurawara Vs. S.K. Sarwagi and Company Private Limited and another, (2008) 14 Supreme Court Cases 364** has



held that pre-trial amendment should be allowed liberally because no prejudice will be caused to the defendant as the defendant will have the opportunity to meet the case of the plaintiff. In the present case, as stated above, no trial has commenced and the defendants have got the opportunity to meet the case of the plaintiff. If amendment is refused, it will occasion failure of justice and it will lead to multiplicity of proceeding.

7. The Hon'ble Supreme Court in the case of **L.C. Hanumanthappa Vs. H.B. Shivakumar (2016) 1 Supreme Court Cases 332** has held that all the amendment should be allowed if two conditions are fulfilled i.e if it is necessary for determination of the real controversies between the parties and it does not work injustice to the other side.

8. Here, the court below in the impugned order nowhere recorded any finding that whether the amendment sought for by the plaintiff is either subsequent event or is necessary for determination of real controversies between the parties. So far injustice to the defendant is concerned, there is no question of injustice to the defendant arises because by mere amendment of the pleading it neither causes prejudice to the defendant nor causes injustice to the other side as still trial has not commenced. Thus, the learned court below has refused to



exercise the jurisdiction vested in it by law and if the impugned order is allowed to stand, it will occasion failure of justice.

9. In the result, this writ application is allowed and part of the impugned order whereby the amendment application was rejected is set aside. The plaintiff's amendment application is allowed as a whole.

(Mungeshwar Sahoo, J)

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