

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20850 of 2013

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Deo Kishore Yadav

.... Petitioner/s

Versus

Rajesh Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 21-09-2017 Heard learned counsel Mr. Ashok Kumar for the petitioner and learned Senior Counsel Mr. S.S. Dwivedi for the respondents.

2. This writ application has been filed by the defendant-petitioner against the order dated 19.08.2013 passed by learned Subordinate Judge-I, Madhepura in Title Suit No.98 of 2002 whereby the learned Subordinate Judge has allowed the amendment application.

3. Admittedly on the date of filing amendment application the evidence of the plaintiff was going on. Therefore, the evidence of the defendant was yet to start. From perusal of the amendment application filed by the plaintiffs which is Annexure-2 to this writ application, it appears that the plaintiffs filed the amendment application seeking permission to amend the plaint introducing new fact which happened during the pendency of the



suit i.e. subsequent event and in view of this subsequent event the plaintiffs prayed for adding a relief regarding confirmation of possession. The learned court below has allowed this amendment application considering the fact that it is necessary for the decision of the suit.

4. The learned counsel for the petitioner submitted that the amendment sought for by the plaintiffs will prejudice the petitioner because the petitioner had already claimed title on the basis of the sale deed and this fact was mentioned in the written statement but subsequently because of the sale deed of the year 2013 the plaintiffs are claiming title which means that earlier on the date of filing the suit, the plaintiffs had no title. Further the learned counsel submitted that the evidence of the plaintiffs has been closed. Now, therefore, without recording finding according to the proviso to Order 6 Rule 17 CPC the court below could not have allowed the amendment application.

5. On the other hand, the learned Senior Counsel for the plaintiffs-respondents submitted that during the pendency of the suit the plaintiffs approached the original owner and obtained the sale deed, therefore, this fact is a subsequent event and on the date of filing amendment application the evidence of the plaintiffs was going on. The defendant has now got opportunity to file



additional evidence and also can adduce evidence in rebuttal of the plaintiffs' case. Therefore, there is no question of prejudice to the defendant-petitioner arises.

6. It is admitted by the parties that at the time of filing amendment application, the evidence of the plaintiffs was going on. The Hon'ble Supreme Court in the case of **Rajkumar Guruwara Vs. S.K. Sarwagi and Company Private Ltd. & Anr. (2008) 14 Supreme Court Cases 364** has held that a **pre-trial amendment could have been allowed liberally as the opposite party would not have prejudiced because he will have an opportunity to meet the amendment sought to be made. However, in case of amendment after the commencement of trial, as in the present case, particularly after completion of the evidence, the question of prejudice to the opposite party may arise and in such an event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso to Order 6 Rule 17 CPC.** In the present case, as stated above the evidence of defendant has not started.

7. Further from perusal of the amendment application, it appears that the fact sought to be introduced by way of amendment is a subsequent event and the Court has the duty to consider the subsequent event. It is the case of the plaintiffs that



the plaintiffs approached the original owner and obtained the sale deed in the year 2013 and then the amendment application was filed. Now, therefore, in my opinion, this fact sought to be amended is necessary for decision of the controversy between the parties.

8. The Hon'ble Supreme Court in the case of **Ravajeetu Builders and Developers Vs. Narayanswamy and Sons and others (2009) 10 Supreme Court Cases 84** has held that the first condition to be considered at the time of allowing or not the amendment application, it must be considered as to whether the amendment sought for is necessary for just decision of the controversies between the parties. Therefore, in my opinion, when the amendment sought for is necessary, it should be allowed particularly when, in the present case, no prejudice is caused to the defendant.

9. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction and accordingly, this writ application is dismissed.

10. The petitioner, if so advised, may file additional written statement to the amendment portion only.

(Mungeshwar Sahoo, J)

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