

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16125 of 2013

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1. Azharul Islam.
 2. Imtyaj Akhta.
 3. Suhail Akhtar.
 4. Arif Akhtar all Son Of Late Md. Sayed Akhtar all Resident Of Village - Sakra Faridpur, P.S. Sakra, District Muzaffarpur.

.... Petitioner/s

Versus

1. Chandeshwar Thakur.
2. Jogendra Thakur both Son Of Kishori Thakur both Resident Of Village - Gobardhanpur, P.S. Sakra, District - Muzaffarpur At Present Resident Of Village - Sakra Faridpur, P.S. Sakra, District – Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-02-2017

Heard Mr. Naresh Chandra Verma, learned counsel for the petitioners and the learned counsel for the respondents.

Earlier the notice was issued to the respondents in the admission matter and the respondents have appeared thereafter.

By the impugned order, the learned court below has refused the prayer of the plaintiffs for amendment in the plaint. From the perusal of the plaint brought on record through supplementary affidavit, it transpires that the plaintiffs have filed the suit for declaration of title over the suit property mentioned in schedule-I of



the plaint and have also prayed for recovery of possession along with the mesne profit. It further transpires that the suit property as mentioned in schedule-I is 5 decimal of land being the southern part of Chak Plot No. 605. It is not in dispute that the trial commenced and at the stage of argument, the plaintiffs filed the petition for certain amendment in the plaint. The petition for amendment has been brought on record as Annexure-1 from which it transpires that by amendment no. I and II, the plaintiffs seek to substantially alter his previous case with regard to the settlement of the dispute through Panchayati. Further by amendment nos. III and IV, the plaintiffs have sought to change the area as mentioned in paragraph-21(b) of the plaint. The learned court below, after hearing the parties, has come to the conclusion that the plaintiffs have failed to establish due diligence in not seeking the amendment at the earlier stages of the suit; and further that the proposed amendment would also lead to de novo trial. Accordingly, the trial court has turned down the prayer of the plaintiffs for amendment as prayed.

After considering the submissions on behalf of the parties and the materials on record, it is manifest that by the proposed amendment, the ambit and scope of the suit is not substantially altered. It is also relevant to take into notice the submission by Mr. Verma, learned counsel for the petitioner, that no evidence shall be



led by the plaintiffs even after the prayer for amendment is allowed as the plaintiffs have already adduced all evidence according to the case being introduced by the amendments. Moreover the learned court below has definitely erred in considering the prayer for amendment in view of the amended provision of Order 6 Rule 17 C.P.C which is not applicable to the proceeding of the present suit which has been filed admittedly in the year 1995. Even otherwise also, the law has been well settled by the Apex Court in the case of ***Rajesh Kumar Aggarwal Vs. K.K.Modi , (2006) 4 SCC 385*** that all the amendment which are necessary for deciding the dispute between the parties finally and substantially be allowed. However, as the plaintiffs have prayed for amendment after much delay when the trial of the suit has reached to the verge of the conclusion, this Court is inclined to allow the prayer for amendment as made by the plaintiffs by imposing cost and fixing a time for disposal of the suit.

Accordingly, this application succeeds and the impugned order is set aside. The prayer made by the plaintiffs in the amendment petition (Annexure-1) is allowed subject to the payment of the cost of Rs. 10000/- by the plaintiffs to the defendants within eight weeks from today by depositing the said cost in the learned court below which will allow the defendants to withdraw the said amount of cost in accordance with law. It is also recorded that the plaintiffs would not



be allowed to adduce any further evidence in view of the amendments which is also the specific stand taken by the learned counsel for the plaintiff-petitioners in this regard. The learned court below, however, shall grant liberty to the defendants to file additional written statement and lead evidence, if prayed. The trial court is further also directed to dispose of the suit preferably within six months from the date of receipt/production of a copy of this order.

The application is, accordingly, allowed with observations and directions as above.

(V. Nath, J)

Devendra/-

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