

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1128 of 2016

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1. Din Dayal Prasad
2. Narayan Prasad
Nos. 1 & 2 Sons of Late Kedar Prasad
3. Mosamat Nilu Devi Wife of Late Vijay Prasad
4. Manorma Wife of Satendra Kumar
5. Ashok Kumar Son of Ram Ayodhya Prasad
6. Shashi Prabha @ Kumari @ Shashi Devi D/o Late Ram Ayodhya Prasad All
resident of Mauza Ratanpur, P.S. Bhagwan Bazar, District - Saran

.... Appellant/s

Versus

1. Deva Nand Prasad
2. Shiv Nandan Prasad
3. Binda Prasad Son of Late Khushi Prasad All resident of Mauza Ratanpur, P.S.
Bhagwan Bazar, District - Saran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Syed Firoz Raza, advocate

For the Respondent/s : Mr. Nagendra Rai, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 10-01-2018

Heard both sides.

2. The petitioners have filed this Civil Misc. petition against the order dated 28.07.2016 passed by learned Sub-Judge-VI in Partition Suit No. 107 of 2005.

3. The plaintiffs filed the partition suit for partition of land mentioned in schedule-1 of the plaint. The case of the plaintiffs is that Khushi Ram was married with Janki Kunwar. Khushi Ram got three sons, namely, Ram Ayodhya Prasad, Jamuna Prasad and Binda Prasad. Sons of Jamuna Prasad and Binda Prasad are plaintiffs and they sought partition of the land standing in the name of Janki Kunwar. The defendants are descendants of Ram Ayodhya Prasad. The defendants contested the suit stating that in fact Khushi Ram had



two wives, namely, Janki Kunwar and Malo Devi. Khushi Ram got one son, Ram Ayodhya Prasad, from Janki Kunwar and two sons, Jamuna Prasad and Binda Prasad from Malo Devi. Janki Kunwar purchased the land in her own name by her own income. During the course of argument of the case the plaintiffs filed amendment petition under Order VI Rule 17 of the Code of Civil Procedure. The learned Sub-Judge allowed the amendment petition vide order dated 28.07.2016. Being aggrieved partly by the aforesaid order, the petitioners filed this Civil Misc. petition.

4. Mr. Syed Firoz Raza, the learned counsel for the petitioners, submits that petitioners are aggrieved by the part of the amendment allowed, which is to be inserted in paragraph 7 of the plaint to the effect that after the word Jarsiman the words “Khushi Ram Se” be inserted. The petitioners did not object the other amendments. The amendment would change the entire nature of the suit. It is submitted that the plaintiffs filed the suit claiming themselves to be sons of Khushi Ram from wedlock of Janki Kunwar. The defendants filed written statement and stated that the plaintiffs are, of course, sons of Khushi Ram but they are born from second wife, Malo Devi. Therefore, they are not entitled to get share in the land standing in the name of Janki Kunwar, first wife of Khushi Ram, who acquired the land from her own income. The plaintiffs by amendment wanted to change the entire nature of the suit by inserting that consideration amount (Jarsiman) was paid by Khushi Ram.

5. On the other hand the learned counsel for the respondents submitted that the amendment is of formal and explanatory in nature and the same would not change the nature of the suit. New plea can be allowed even at the belated stage. The suit is still pending for argument. The learned counsel for the respondents in



support of his contention placed reliance on the judgement of Supreme Court reported in **(1979) 4 SCC 163 (Pandit Ishwar Das v. State of M.P. & Ors.)**. The learned counsel for the respondents further placed reliance on the judgement of the Supreme Court reported in **2009 (4) PLJR SC 215 (Surender Kumar Sharma v. Makhan Singh)** and submitted that mere delay and laches in making application for amendment cannot be a ground to refuse the amendment. Therefore, the order does not require any interference.

6. Having heard the submission of both sides the question arises for consideration as to whether the learned Sub-Judge has committed any jurisdictional error in allowing the amendment petition?

7. The principle with regard to disposal of amendment petition is that if any facts required to be inserted or incorporated in the plaint for resolution of the dispute between the parties and the same does not cause injustice or irreparable prejudice to a party, the amendment petition should be allowed.

8. In the case of *Pandit Ishwasrda v. State of M. P. (supra)* the facts was different. 'M' won an auction of a forest coupe for a certain sum which he agreed to pay in certain installments. The appellant stood his surety. 'M' having defaulted in payment of the installments, the Government terminated the agreement and awarded the remaining period of contract to the appellant after a re-auction. But at expiry of the contract, the Government attached and seized the timber lying in the coupe, which the appellant contractor was entitled to remove on the ground that he was liable as a surety to pay the amount which was due by 'M'. The appellant filed a suit in the court of Additional District Judge for damages inter alia contending that the agreement between 'M' and the Government was in contravention of



Article 299, as the agreement was not made by the Divisional Forest Officer, in the name of Raj Pramukh of the State. The contention was negatived by the Additional District Judge as well as the High Court in appeal. After terminating the contract with 'M' when the Government sought to recover the amount in default from the appellant surety, another suit was filed by the appellant for a declaration that the agreement between 'M' and the Government and the surety bond executed by the appellant were illegal and unforceable inasmuch as Article 299 was not complied with and the plaintiff appellant was discharged from suretyship under Sections 135 and 139 of the Contract Act. The trial court accepted the first plea regarding non compliance of Article 299 and decreed the suit. An appeal was then preferred to the High Court against the decree and during its pendency the defendant was permitted to raise an additional plea that the suit was barred by res judicata by reasons of the decision of the High Court in the first suit. On such facts it was held that the plea of amendment with regard to the written statement at the appellate stage with regard to principle of res judicata is permissible.

9. Similarly, in the case of *Surendra Kumar Sharma v. Makhan Singh (supra)* the suit was for eviction on the ground of arrears of rent wherein it was held that the amendment sought for would not change the nature of the suit and the suit would remain a suit for eviction. The facts of this case is also quite different.

10. The facts of the present case is that plaintiffs, descendants of Jamuna Prasad and Binda Prasad, were born from second wife of Khushi Ram. They filed the suit for partition of the land standing in the name of Janki Kunwar, first wife of Khushi Ram. The plaintiffs claimed that they are also sons of Janki Kunwar, wife of Khushi Ram, but the defendants filed the written statement disputing



the facts and stated that Khushi Ram got two wives, namely, Janki Kunwar and Malo Devi and from Janki Kunwar Khushi Ram got one son Ram Ayodhya Prasad and from Malo Devi he got two sons Jamuna Prasad and Binda Prasad. The suit was tried and fixed for argument. Thereafter, the plaintiffs filed petition that the consideration amount for purchasing the property in the name of Janki Kunwar was paid by Khushi Ram and this amendment would certainly change the nature of the suit.

11. Therefore, I find that the learned Sub-Judge has committed jurisdictional error by allowing the entire amendment petition. Accordingly, this Civil Misc. petition is partly allowed and the order dated 28.07.2016 is set aside so far it relates to the amendment with regard to inserting words “Khushi Ram Se” after the word Jarsiman.

However, it is needless to say that this order may not prejudice the case of plaintiffs.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
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