

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1803 of 2019**

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Rajesh Bhagat Gupta, Son of Late Ramdeo Sah, resident of Mohalla- Patel Chowk, Haveli Kharagpur, Situhar Kharagpur, P.O.- Kharagpur, P.S.- Kharagpur District- Munger.

... .. Petitioner

Versus

1. Brahmdeo Sah, Son of Bhuneshwar Sah, resident of Village- Purab Azimganj, P.O.- Haveli Kharagpur, P.S.- Haveli Kharagpur District- Munger.
2. Vishesh Kumar, Son of Bhuneshwar Sah, resident of Village- Purab Azimganj, P.O.- Haveli Kharagpur, P.S.- Haveli Kharagpur District- Munger.

... .. Respondents

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Appearance :

For the Petitioner : Mr.Harshwardhan Sahay

For the Respondents :

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 24-01-2020

The present application has been filed *"against the order dated 16.09.2019 passed by Munsif 1st, Munger in the Title Suit No. 5 of 2014/CIS No. 134 of 2014 whereby and whereunder petition dated 03.06.2019 filed by plaintiff has been allowed."*

2. Learned counsel for the defendant no. 2/petitioner submits that the learned Court below ought not to have allowed the amendment petition of the plaintiff by which Schedules- I, II and III have been added containing the details of the property which were not provided in the plaint. It is submitted that specific plea in this regard has been made in paragraph-17 of the written statement that no details of partition or encroachment had been given in the



plaint in support of the claim that the defendant no.2/petitioner had blocked 3 ½ feet from northern end. It is submitted that such amendment has been allowed to be made after the evidences of the plaintiffs' witnesses as well as of the defendant no. 2/petitioner have been closed which will cause prejudice. It is further submitted that such amendment ought not to have been permitted also in view of the proviso to Order VI Rule 17 of the Civil Procedure Code which prohibits amendment if the matter could have been raised before commencement of trial by the party by exercising due diligence.

3. Having heard learned counsel for the defendant no. 2/petitioner and on consideration of the materials on record, this Court is not inclined to interfere in the matter. No doubt, the defendant no. 2/petitioner had raised an objection in paragraph-17 of his written statement with regard to details of the alleged encroachment by him not having been stated in the plaint. However, it transpires from paragraph-17 of the plaint itself that requisite details of the allegedly encroached portion had been mentioned such as Khesra No. 670 width 3 ½ feet along with other details. The learned Court below has rightly observed that the plaintiff has not brought any new facts or materials rather the details of the partitioned property have been sought to be set out in schedules for purposes of further elucidation. It has been opined that omission to make the schedules in the plaint was owing to oversight on the part of counsel which was not intentional and the



amendment would assist the court in better understanding the suit land.

4. The Hon'ble Supreme Court in *Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka & Ors., 2013 (2) PLJR 356(SC)* has expressed the view that amendment should be liberally allowed in order to reduce multiplicity of proceedings and may be permitted even at a belated stage in order to enable the dispute between the parties to be finally resolved.

5. The defendant no. 2/petitioner shall have liberty to file additional written statement and may also make a prayer for recall of the plaintiffs' witnesses in order to satisfy the learned Court below that the defendant no. 2/petitioner has suffered prejudice by reason of the amendment.

6. The petition accordingly stands dismissed.

(Vikash Jain, J)

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CAV DATE	N.A.
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