

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.270 of 2018

Saleha Khatoon @ Bibi Saleha Wife of Md. Ansari @ Dost, Resident of Village- Thana Chowk, Purab Tola, Jamui, P.O. and P.S.- Jamui, District- Jamui.

... .. Petitioner/s

Versus

1. Ruhi Praveen, Wife of Zahid Hussain, Resident of Purani Bazar, P.O. and P.S.- Jamui, District- Jamui.
2. Amina Khatoon, Wife of Md. Farookh, Resident of Purani Bazar, Thana Chowk, Jamui, P.O. and P.S.- Jamui, District- Jamui.
3. Rekha Devi, Wife of Manish Ram, Resident of Shanti Nagar, Jamui, P.O. and P.S.- Jamui, District- Jamui.
4. Shahin Praveen, Wife of Md. Aube Ansari, Residence at Village- Neemarang, Jamui, P.O. and P.S.- Jamui, District- Jamui.
5. Sabiya Begum, Wife of Siraj, Resident of Maulana Azad Nagar, Jamui, P.O. and P.S.- Jamui, District- Jamui.
6. Suma Devi, Wife of Awdesb Ram, Resident of Shanti Nagar Jamui, P.O. and P.S.- Jamui, District- Jamui.
7. Swata Malakar, Wife of Mahesh Kumar Malakar, resident of Thana Chowk, Jamui, P.O. and P.S.- Jamui, District- Jamui.
8. The State of Bihar through Collector, Jamui.
9. The State Election Commissioner, Bihar, Patna.
10. The District Election Officer-cum-District Magistrate, Jamui.
11. The Returning Officer-cum-S.D.M., Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kaushalesh Choudhary
For the Respondent/s	:	Mr.Prashant Pratap, GP 2
		Mr. Sanjay Kumar, AC to GP 2
For Respondent No. 9	:	Mr. Girish Pandey

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

2 14-07-2022 Heard learned Counsel for the parties concerned.

The petitioner is aggrieved by the orders, dated
06.11.2017 and 13.12.2017, passed by learned Sub Judge-I,



Jamui, in Election Petition No. 01 of 2017, whereby the learned Court below has allowed the amendment sought by the plaintiff-respondent no. 1.

The petitioner-defendant no. 1 is the returned candidate in a municipal election and was elected as Ward Councillor. The election of the petitioner was challenged in a suit/election petition filed by plaintiff-respondent no. 1, in which an amendment application has been filed by the plaintiff-respondent no. 1 seeking amendment of the plaint inasmuch as according to the plaintiff-respondent no. 1, by typographical mistake, some words were wrongly typed in the petition, which is required to be corrected. The amendment application was allowed by the learned Court below by orders, dated 06.11.2017 and 13.12.2017.

Learned Counsel for the petitioner, assailing the impugned orders, submits that at the time of hearing of the amendment petition, adequate opportunity to file rejoinder was not given to the petitioner-defendant no. 1 by the learned Court below and further the petitioner-defendant no. 1 was also not given opportunity of hearing. He further submits that by way of amendment, the plaintiff-respondent no. 1 tried to change the nature of the suit inasmuch as in the plaint, it has been stated



that in the election, ballot papers were used, but by way of amendment, the plaintiff-respondent no. 1 wanted to delete the word 'ballot paper' with 'vote'. He also submits that while allowing the amendment, the learned Court below has not considered the proviso, introduced in the year 2002 to Order VI Rule 17 of the C.P.C. inasmuch as defendants had appeared and filed their written statements and as such the suit had commenced and after commencement of the suit, the amendment ought not have been allowed without considering the due diligence on the part of the plaintiff. He further submits that rejoinder was filed on 28.11.2017, which was not considered by the learned Court below while passing the impugned order, dated 06.11.2017.

I have heard learned Counsel for the petitioner and have gone through the materials on record, including the order sheet annexed with this application. It appears that the amendment application was filed by the plaintiff-respondent no. 1 on 18.09.2017 and by order, dated 09.10.2017, the petitioner-defendant no. 1 was directed to file rejoinder to the amendment petition. On 17.10.2017, the plaintiff-respondent no. 1 was heard and for the argument of the petitioner-defendant no. 1, the case was fixed for 30.10.2017. On 30.10.2017, both the parties



were heard and again the matter was fixed for 06.11.2017 for hearing and for orders. From perusal of the order, dated 06.11.2017, it appears that the petitioner-defendant no. 1 was heard on the rejoinder filed by her on the amendment petition, dated 18.09.2017 and the amendment sought by the plaintiff-respondent no. 1 was allowed taking into consideration the plea of typographical error and further that amendment would not change the nature of the suit. From the order, dated 13.12.2017, it transpires that due opportunity was given to the petitioner-defendant no. 1 before allowing the amendment petition and the petitioner-defendant no. 1 was also heard on 30.10.2017 and the case was fixed for further hearing and for orders and on 06.11.2017, the petitioner-defendant no. 1 was again heard and the amendment was allowed. The learned Court below has allowed the amendment after arriving at the conclusion that it will not change the nature of the suit and the amendment sought by the plaintiff-respondent no. 1 was bona fide and to correct the typographical error. It also transpires that the amendment has been allowed before commencement of the trial inasmuch as issues were yet to be framed.

Accordingly, I do not find any cogent ground for interference in the impugned order.



This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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