

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.497 of 2018**

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Md. Kasim Son of late Hazi Md. Jamal Resident of Village Sanhoula, P.O.
and P.S. Sanhoula, District Bhagalpur.

... .. Petitioner/s

Versus

Saiyed Samsul Haque Son of late Saiyed Alimuddin Resident of Village
Sanhoula, P.O. and P.S. Sanhoula, District Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dr. Manoj Kumar
For the Respondent/s : Mr.Ratnakar Ambastha

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 13-12-2022 The learned trial court has rejected the pre-trial

amendment sought by the petitioner-plaintiff by the impugned

order dated 07.02.2018 passed in Title Suit No. 447 of 2011.

Learned counsel for the petitioner submits that

inadvertently certain relevant facts which were necessary to be

brought in the plaint could not be brought and some irrelevant

facts have been added in the plaint, and as such, before

commencement of the trial and framing of issues, an

amendment petition has been filed by the petitioner- plaintiff to

bring certain relevant facts and to amend the Schedule -A of the

plaint by changing Khata No., area and boundary of the suit

land.

Learned counsel for the defendant-respondent submits

that by virtue of the proposed amendment the petitioner



-plaintiff wants to change the description of the land mentioned in the original plaint inasmuch as in the original plaint at Schedule A, Khata No. and area of land was mentioned as 514 and 0.27 decimals, whereas, by way of amendment the petitioner wants to change the Khata No. and area as 554 and 0.02 $\frac{3}{4}$ decimals. Learned counsel further submits that it will change the nature of the suit also if the amendment is allowed.

I have heard learned counsel for the parties. The suit has been filed for declaration of title upon the suit land described in Schedule A, B & C. By way of amendment the petitioner-plaintiff wants to change the Khata No. and area of Schedule – A land before commencement of the trial. The proposed amendment in my opinion will not change the nature of the suit only because some description of the suit land has been proposed to be changed. The suit will still remain the suit for declaration of right, title and interest of the plaintiff. The petitioner has brought the amendment petition before commencement of trial and as such no prejudice shall be caused to the defendant also and defendant will have the chance of rebuttal by filing additional written statement.

In view of the aforesaid, I find that the learned trial court has committed material irregularity and jurisdictional



error by rejecting the pre-trial amendment filed by the petitioner.

In the result, this application is allowed. The order dated 07.02.2018 passed in Title Suit No. 447 / 2011 is set aside. The petitioner is permitted to make amendment in the plaint within the time prescribed by the trial court.

It goes without saying that the defendant-respondent shall be given opportunity to file additional written statement.

(Anil Kumar Sinha, J)

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