

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.539 of 2018**

1. Anil Pandit, S/o Lal Dhari Pandit,
2. Vijay Kumar Pandit, Son of Chhotelal Pandit,
Both are resident of Village- Khirainia, P.O.- Balha Bazar, P.S.- Mansi,
District- Khagaria.

... .. Petitioner/s

Versus

1. Md. Haidar Imam, Son of Obos, Resident of Village- Khirainia, P.O.- Balha Bazar, P.S.- Mansi, District- Khagaria.
2. Md. Sultan Ahmad, Son of Late Syed Jamal Ahmad, Resident of Village- Mushklpur, P.O.- Jamalpur, P.S.- Gogri, District- Khagaria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dronacharya, Sr. Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 18-08-2022 Heard Mr. Dronacharya, learned senior counsel
appearing for the petitioner.

The petitioner is aggrieved by the order dated 25.01.2018 passed by the learned Sub Judge-I, Khagaria, in Title Suit No. 33 of 2016, by which, the amendment in the written statement has been allowed by the learned Trial Court.

Learned senior counsel appearing for the petitioner submits that the learned Trial Court has committed error of law by allowing the amendment in the written statement inasmuch as the same has been allowed



after framing of issue i.e. after commencement of the trial.

I have heard learned counsel for the petitioner and have perused the impugned order. It appears that the learned Trial Court has come to the conclusion that the amendment sought by the defendant in the written statement shall not prejudice the case of the plaintiff and the evidence on behalf of the plaintiff is yet to be started. It further appears that the learned Trial Court has allowed the amendment in the written statement in order to decide the issue between the parties justly and effectively.

The Supreme Court in the case of ***Chander Kanta Bansal v. Rajinder Singh Anand***, reported in ***(2008) 5 SCC 117***, has held that the liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment. It has further been observed by the Hon'ble Supreme Court that the new proviso lays down that no



application for amendment shall be allowed after the commencement of trial, unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. But whether a party has acted with due diligence or not would depend upon the facts and circumstances of each case. This would, to some extent, limit the scope of amendment to pleadings, but would still vest enough powers in courts to deal with the unforeseen situations whenever they arise. Therefore, it is not a complete bar nor shuts out entertaining of any later application. The reason for adding proviso is to curtail delay and expedite hearing of cases.

It appears that the suit has been filed for declaration of title and confirmation of possession by the plaintiff/petitioner. Upon perusal of the proposed amendment it appears that the same is factual in nature and since the evidence of the plaintiff has not started, the plaintiff shall not be prejudiced and the Trial Court has also observed that the plaintiff will get sufficient opportunity to contest the case during course of



the trial.

Accordingly, I am of the view that in order to advance the cause of justice, the amendment of written statement has been allowed by the learned Trial Court. Thus, I find that there is no material irregularity and jurisdictional error in the impugned order.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J)

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