

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.35 of 2018

- 1.1. Md. Ehsan Ullah, Son of Late Saiyad Ashad Ullah, Resident of Village - Hamzapur, Near Chhoti Masjid, Kumar Ali Sultan Road, P.O. - Sherghati, Police Station - Amas, District - Gaya.
- 1.2. Syed Aman Ullah, Son of Late Saiyad Ashad Ullah, Resident of Village - Hamzapur, Near Chhoti Masjid, Kumar Ali Sultan Road, P.O. - Sherghati, Police Station - Amas, District - Gaya.
- 1.3. Syed Raza Ullah, Son of Late Saiyad Ashad Ullah, Resident of Village - Hamzapur, Near Chhoti Masjid, Kumar Ali Sultan Road, P.O. - Sherghati, Police Station - Amas, District - Gaya.
- 1.4. Sajeda Khatoon, Daughter of Late Saiyad Ashad Ullah, Wife of Md. Mustaha Hussain, Resident of Village - Niskha, P.O.- Bishunpur, P.S.- M.U. Bodh Gaya, District - Gaya.
- 1.5. Kaneez Fatema, Daughter of Late Saiyad Ashad Ullah, Wife of Waheed Ur Rahman, Resident of Village - Peer Bigha, P.O. - Chakand, Police Station - Chakand, District - Gaya.
- 1.6. Nafisa Khatoon, Wife of Late Saiyad Ashad Ullah, Resident of Village - Hamzapur, Near Chhoti Masjid, Kumar Ali Sultan Road, P.O.- Sherghati, P.S. Amas, District - Gaya.

... .. Petitioner/s

Versus

1. Md. Minhaz Khan null Resole Tyre Shop, resident of Immamganj More, P.S.- Amas, P.O.- Sherghati, District- Gaya, Bihar.
2. Taj Ishrat @ Jhunnu, Son of Late Saiyad Moizaur Rehman, Resident of Immamganj More, P.S.- Amas, P.O.- Sherghati, District- Gaya, Bihar.
3. Sri Uday Sao, Son of Late Ganesh Sao, Resident of Immamganj More, P.S.- Amas, P.O.- Sherghati, District- Gaya, Bihar.
4. Sir Siri Yadav, Son of Shanker Yadav, Proprietor- Krishna Mishthan Bhandar, Sweet Shop, Resident of Immamganj More, P.S.- Amas, P.O.- Sherghati, District- Gaya, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Narendra Kumar Singh
For the Respondent/s : Mr.S. Jamil Akhtar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 01-09-2022 The petitioner is a plaintiff in a suit filed for
declaration of right, title and interest as well as delivery of



vacant possession of the suit land bearing Title Suit No. 503 / 2015.

The petitioner is aggrieved by the order dated 20.11.2017 passed in Title Suit No. 503 of 2015 by which the amendment sought by the plaintiff in the schedule of the plaint has been rejected.

Learned counsel for the petitioner submits that the learned trial court has committed material irregularity and refused to exercise his jurisdiction in terms of the provision mentioned in Order 6 Rule 17 of the C.P.C. on erroneous ground and failed to appreciate that amendment sought by the plaintiff in the schedule of the plaint was in the nature of correction of typographical error and the defendants whose evidence has not yet been started shall not be prejudiced by the amendment. Referring to the amendment petition annexed at Annexure- 2 to the present petition he submits that due to typographical error Plot No. 136 has been mentioned in the schedule of the plaint instead of Plot No. 139 along with corresponding area of the plot inasmuch as instead of area of Plot No. 136 measuring 1 Acre 30 Decimal the area sought to be amended in Plot No. 139 as 0.50 Decimal in schedule- II of the plaint. Learned counsel further submits that amendment petition was filed after framing



of issues and before start of evidence but the plaintiff in his deposition in paragraph- 35 has stated that due to typographical error Plot No. 136 is mentioned in schedule-II of the plaint instead of Plot No. 139. Learned counsel relies upon an unreported judgment of this court passed in C. Misc. No. 902 / 2016 and submits that this court after taking into consideration the judgment of the Hon'ble Supreme Court rendered in L.C. Hanumanthappa case reported in **(2016) 1 Supreme Court Cases 332 L.C. HANUMANTHAPPA Versus H.B. SHIVAKUMAR** has allowed the amendment petition on the ground that no prejudice shall be caused to the defendants if the amendment is allowed as the defendants will have an opportunity to meet the case of the plaintiff brought by amendment by filing additional written statement.

I have heard learned counsel for the petitioner. No one appears for the defendants- respondents despite service of notice and “*vakalatnama*” having been filed on behalf of the defendants-respondents.

In the present case amendment petition was filed for correction of typographical error after framing of issues. The plaintiff led evidence and deposed after amendment application was filed and has categorically stated that in his deposition that



Plot No. 136 was wrongly typed instead of Plot No. 139. The Hon'ble Supreme Court in a judgment reported in **(2018) 2 Supreme Court Cases 132 Mohinder Kumar Mehra versus Roop Rani Mehra and Others** has dealt with the proviso of Order 6 Rule 17 of the C.P.C. and has held that “technically trial commenced when the date was fixed for leading evidence by the plaintiff but actually the amendment application was filed before the evidence was led by the plaintiff. The parties led evidence after the amendment application was filed. According to the plaintiff the parties had led evidence even on the amended pleadings and the plaintiff's case was that in view of the fact that the parties led evidence on amended pleadings, the allowing of the amendment was a mere formality. Looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in the present case, no prejudice can be said to have caused to the defendants by the amendments since the evidence was led subsequent to the filing of the amendment application.”

In the present case the situation is almost similar and before the evidence was led by the plaintiff the amendment petition was filed and the plaintiff also led evidence on the amended pleadings. Admittedly the evidence of the defendants



has not yet been started.

In view of the discussion as held hereinabove on the point of law and facts, I am of the opinion that if amendment which is in nature of typographical error is allowed, no prejudice shall be caused to the defendants-respondents. Accordingly the order dated 20.11.2017 passed in Title Suit No. 503 of 2015 is set aside the amendment in the pleadings sought by the petitioner is hereby allowed.

This civil miscellaneous application stands disposed of.

(Anil Kumar Sinha, J)

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