

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.538 of 2017

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Smt. Sunita Devi, Wife of Shiv Narayan Yadav, D/o Late Ram Kishun Yadav,
Resident of Village- Jarsain, P.O.- Nandlali, P.S. and District- Saharsa.

... .. Petitioner/s

Versus

1. Sajjan Kumar, Son of Late Vishwanath Prasad Kewal.
2. Pawan Kumar, Son of Late Vishwanath Prasad Kewal.
3. Smt. Savitri Devi, W/o Late Vishwanath Prasad Kewal, All Resident of Kaprapatti, P.O. P.S. District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur, Advocate
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

3 22-03-2023 Heard learned counsel for the petitioner.

2. This Civil Miscellaneous Application under Article 227 of the Constitution has been filed against the order dated 15.11.2016 passed by the learned Sub Judge-III in Title Suit No. 116 of 2005 whereby and where under the learned Court below has allowed the application filed by the defendants for amendment in written statement.

3. Learned counsel for the petitioner submits that the learned Court below has allowed the amendment application during the plaintiff evidence stage causing prejudice to the plaintiff.

4. Learned counsel for the petitioner further submits that the learned trial Court failed to appreciate that proposed



amendment appears to be withdrawing the admission made in the written statement. He has further submitted that the proposed amendment which has been allowed by the trial Court is not a typographical error and also the Court has not given liberty to the petitioner to lead the evidence with respect to the proposed amendment.

5. Having heard the learned counsel for the petitioner and perused the material on record, it appears from the impugned order that the Court has allowed the amendment application and observed that the proposed amendment will not change the nature of the suit and the amendment is formal in nature which is required in the interest of justice for proper disposal of the suit. The said amendment was allowed with cost.

6. The law is well settled that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footing. The general principle that amendment in pleading cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint and this principle is not applicable relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in written



statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable. The Court should be more liberal in granting the prayer for amendment of the written statement than that of plaint as the question of injustice would be far less in former than in the latter case. The amendment in written statement may be rejected if serious injustice or irreparable loss is caused to the plaintiff or on the ground that prayer for amendment was not a *bona fide* one. It is open to a defendant to take even contrary or contradictory stands as the cause of action is not in any manner affected.

7. In the present case, since the defendants are allowed to amend written statement, certainly opportunity be given to plaintiff to reply amended portion in the written statement and to adduce evidence so that no prejudice would be caused to the plaintiff.

8. In view of the aforesaid legal provisions discussed above, in my considered opinion, there is no jurisdictional error or any illegality calling for any interference by this Court under the supervisory jurisdiction of this Court. Accordingly, this Miscellaneous Application is dismissed. However, the liberty is given to the petitioner to contest / reply amended portion in the



written statement and to adduce the evidence, if required, in view of the amendment allowed in the written statement.

9. Since, the suit is of year 2005, the Court below is directed to expedite the disposal of the suit and both the parties shall cooperate to the learned Court below in early disposal of the suit.

10. Accordingly, this Civil Miscellaneous Application is disposed of with the aforesaid observation and direction.

(Sunil Dutta Mishra, J)

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