

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1417 of 2017

Nirmal Kumar, son of Late Uma Shankar Sharma, resident of Village - Kasimchak, Post - Belhari, Police Station - Dulhin Bazar, District - Patna at present residing at Mohalla - Tengri, Post - Chaibasa, Police Station - Sadar, District - West Singhbhum, Jharkhand.

... .. Petitioner/s

Versus

1. Shiv Shankar Singh, son of Late Rajnandan Singh
2. Most. Janki widow of Late Madan Dhari Singh
3. Shambhudhari Singh son of Late Rajendra Singh
4. Bipin Bihari Singh son of Sri Shiv Shankar Singh
5. Rakesh Kumar Sharma son of Sri Shiv Shankar Singh
6. Pintu Sharma son of Sri Shambhu Dhari Singh All residents of Village - Kasimchak, Post - Belhari, Police Station - Dulhin Bazar, District - Patna.
7. Nageshwar Sharma son of Late Yamuna Sharma
8. Krishna Murari Sharma son of Late Yamuna Sharma
9. Mahesh Prasad Sharma son of Late Indradeo Singh
All residents of Village - Kasimchak, Post - Belhari, Police Station - Dulhin Bazar, District - Patna. Respondent No. 9 is at present residing at Mohalla - Tanghi, Post - Chaibasa, Police Station - Sadar, District - West Singhbhum, Jharkhand.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar, Advocate
For the Respondent/s : None.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 03-12-2024

Despite repeated calls, none appeared for the respondents.

2. Heard learned counsel for the petitioner and I intend to dispose of the present petition at the stage of admission itself.

3. The present petition has been filed under Article



227 of the Constitution of India for setting aside the order dated 10.02.2017 passed by learned Sub Judge, Paliganj, Patna in Title Suit No. 267 of 2009 whereby and whereunder the learned trial court allowed the petition filed on behalf of the defendant nos. 1 to 6/respondents 1st set under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

4. The learned counsel for the petitioner submits that the impugned order is not sustainable as after commencement of trial and when the evidence of the defendants was being recorded, the learned trial court allowed the amendment in the written statement. The learned trial court did not consider that by way of amendment, the defendants are allowed to withdraw their admission. The learned counsel further submits that by allowing the amendment in the written statement, serious prejudice has been caused to the plaintiff/petitioner and he would be deprived from controverting the facts which have been said to be introduced in the written statement by way of amendment. The learned counsel further submits that in fact, allowing the amendment would amount to starting the trial afresh and *de novo* trial would take place. Thus, learned counsel submits that the impugned order is not sustainable and the same



needs to be set aside.

5. Perused the record.

6. From perusal of amendment application and the written statement of the defendants, the claim of learned counsel for the petitioner about withdrawal of admission is simply not sustainable as the said amendment has been sought in paragraph 9 of the written statement and substitution of the words plaintiff by defendants appears to be clarificatory and more and less typographical errors since the existing word contradicts the previous averments in the same paragraph and would be against the contention made in the previous line of paragraph 9. Similarly, other amendments are either correction of typographical errors or amendments in the nature of clarification or more or less not causing any prejudice to the plaintiff/petitioner. The endeavour of the court should be towards determination of real controversy between the parties and for this purpose the amendments which are not malafide or do not cause prejudice to the other side should be liberally allowed. The learned trial court in the impugned order has also given liberty to the plaintiff to controvert the amendment by producing oral or documentary evidence after the closure of the evidence of the defendants. I think it is balanced order and does not need



any interference by this Court. Hence, the same is affirmed.

7. Finding no merit in the present petition, the same stands dismissed.

8. However, it is made clear that the liberty granted by the learned trial court could always be availed by the plaintiff/ petitioner by moving appropriate application.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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