

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1821 of 2018

Sharmanand Tiwari, son of Late Bhawani Shankar Tiwari, Resident of Village- Munshi Bazar Ranjita, P.O.- Panapur, P.S. Harsidhi, District- East Champaran.

... .. Petitioner/s

Versus

1. Priyaranjan Kumar Shrivastav
2. Pushpranjan Kumar Shrivastav, Both sons of Late Dr. Shashibhushan Prasad Shrivastav, Both Resident of Village- Munshi Bazar Ranjita, P.O. Panapur, P.S. Harsidhi, District- East Champaran.
3. Pramod Prasad Shrivastav, son of Late Madan Mohan Prasad Shrivastav, Resident of Village- Munshi Bazar Ranjita, P.O.- Panapur, P.S. Harsidhi, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Umesh Tiwari, Advocate
For the Respondent/s : Mr. Patanjali Rishi, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 21-02-2024

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

2. The instant petition has been filed for quashing the order dated 18.08.2018 passed by the learned Sub-Judge, Areraj, East Champaran in Title Suit No. 429 of 2015 by which the learned Sub-Judge, Areraj, East Champaran rejected the amendment sought in paragraph nos. 1 and 2 of the petition dated 12.02.2018 filed by the petitioner under Order VI Rule 17



of the Code of Civil Procedure (hereinafter the Code).

3. Learned counsel for the petitioner submits that the petitioner is plaintiff in Title Suit No. 429 of 2015 which was filed for declaration of title and confirmation of possession over Schedule 2 property of the plaint. A genealogical table has been given in Schedule 1 of the plaint and the petitioner filed amendment petition on 12.01.2018 for making correction in the name of the ancestors in the genealogical table apart from some other amendments in the petition showing the correct relationship. A rejoinder was filed by the respondents to the said amendment petition raising objection against the amendment petition. The learned trial court after hearing the parties, partially allowed the amendment petition rejecting the amendments at serial nos. 1 and 3 of the amendment petition.

4. Learned counsel further submits that in the genealogical table, Parmeshwar Tiwari, Vishuni Tiwari and Bhagwan Tiwari were stated to be brothers and Hira Tiwari was stated to be the son of Vishuni Tiwari but the Vishuni Tiwari is the father of Parmeshwar Tiwari, Bhagwan Tiwari and Hira Tiwari and amendment to this effect is being sought to be introduced in paragraph no.1 and also in genealogical table at Schedule 1. Learned counsel further submits that the trial is still



at the stage of settlement of issues and issues are yet to be settled. Further, the respondents have also denied the fact that Parmeshwar Tiwari, Vishuni Tiwari and Bhagwan Tiwari were brothers. Since the suit is still at the initial stage, the learned trial court ought to have allowed the prayer for amendment in its entirety and ought not to have rejected certain amendments sought by the petitioner.

5. Learned counsel appearing on behalf of the respondents vehemently contended that the present civil miscellaneous petition is not maintainable and the impugned order is correct and there is no need to interfere with the same. Learned counsel further submits that the petitioner wants to withdraw his admission made in the plaint and genealogical table. Learned counsel further submits that earlier a case has been filed by the same petitioner before the court of learned Deputy Collector Land Reforms, Areraj wherein the petitioner filed the same genealogical table. Learned counsel further submits that the petitioner is trying to bring substantive change in the facts of the case since the petitioner would be changing the relationship between the persons described in paragraph 1 of the plaint as well as in the genealogical table in schedule 1. Learned counsel further submits that through the amendment,



entire basis of the suit is sought to be changed and the answering respondents have filed the written statement denying the averments made in the plaint submitting that Hira Tiwari has no concern either with Brahamdeo Tiwari and Harihar Tiwari and to meet out this contention, the present amendment is being brought by the petitioner. Thus, learned counsel submits that the instant petition has got no merit and the same may be dismissed.

6. Admittedly, the case is still at the stage of framing of issues. If the plaintiffs wants to bring certain amendment in his plaint, he can do so if the amendments fulfill the provisions under Order VI Rule 17 of the Code which reads as under:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, 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.”

7. Evidently, amendment can be brought at any stage



commencement of trial and even after its commencement under certain condition. Amendment at this stage should not cause any prejudice to the respondents if the respondents get the opportunity to rebut/controvert the same. Further, the submission of the learned counsel for the respondents regarding admission being made in the plaint or its withdrawal, I do not think on reading of the plaint and written statement it could be said that certain admissions were sought to be withdrawn. If relationship is sought to be corrected, it could not be said that the admission is being withdrawn. Further, the petitioner using the same genealogical table before the court of learned Deputy Collector Land Reforms, Areraj is concerned, it appears the said case and the Title Suit No. 429 of 2015 have been filed in quick succession and if the error was not corrected in the earlier case, it is more essential that the same be corrected in the present title suit. However, the amendments have been sought after lapse of much time after filing of the plaint and as the written statement has already come on record the respondents should be adequately compensated if the amendments are to be allowed.

8. Considering the stage of the case before the learned trial court and the nature of amendments, the application dated 12.01.2018 filed before the learned trial court is allowed in its



entirety and order dated 18.08.2018 passed by the learned Sub-Judge, Areraj, East Champaran in Title Suit No. 429 of 2015 stands modified to the aforesaid extent subject to payment of cost of Rs, 5,000/- to the respondents within a month from the date of receipt/production of a copy of this order. The respondents will be given ample opportunity to rebut/controvert the claim of the petitioner/plaintiff sought to be brought through amendment by way of filing amended written statement/additional written statement.

9. Accordingly, the instant petition stands allowed.

(Arun Kumar Jha, J)

balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.02.2024
Transmission Date	NA

