

(2014) 02 PAT CK 0082
In the Patna High Court
Case No : CWJC No. 20993 of 2012

Chandrika Chaudhary

APPELLANT

Vs

Horil Chaudhary

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2014) 4 PLJR 457

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Binod Kumar Singh, Advocate for the Appellant

Judgement

Mungeshwar Sahoo, J.—Heard the learned counsel, Mr. Binod Kumar Singh appearing on behalf of the petitioners and the learned counsel, Mr. Chandrakant appearing on behalf of the respondent. This application under Article 227 of the Constitution of India has been filed by the defendants-petitioners against the order dated 22.9.2012 passed by the learned 2nd Munsif, Siwan in Title Suit No. 160 of 1985 whereby the learned court below allowed the amendment application filed by the plaintiff-respondent.

2. It appears that the plaintiff filed the aforesaid amendment application seeking addition of a relief whereby the plaintiff prayed for recovery of possession to the suit property. The court below by the impugned order allowed the said application recording a finding that by the amendment, nature of the suit is not changed.

3. The learned counsel, Mr. Binod Kumar Singh submitted that the amendment sought for by the plaintiff is mala fide as the plaintiff was knowing that they were not in possession of the property when the suit was instituted in the year 1985 but the amendment has been sought for after such a long period when a right has accrued in favour of the defendant and further, that the amendment sought for is barred by law of limitation.

4. On the other hand, the learned counsel, Mr. Chandrakant appearing on behalf of the respondent submitted that in fact, there is no question of limitation arises in the present case because only the relief has been added whereby the plaintiff prayed for recovery of possession. So far knowledge is concerned, according to the learned counsel, the merit of the amendment application cannot be decided at this stage. The learned counsel further submitted that even if, it prima facie appears that the amendment sought for is barred by law of limitation, it is a triable issue, therefore, at the time of amendment on the ground of limitation, the amendment cannot be refused and the learned court below therefore, has rightly not refused the amendment application.

5. Admittedly, the suit is of the year 1985. In the body of the plaint, the plaintiff is not praying for any amendment introducing new facts. Only in the relief portion, he is praying that a relief may be added for recovery of possession. Whether the plaintiff will be entitled to the said recovery of possession or not is a matter that may be decided at the stage of hearing but at the stage when the amendment application is filed, the Court is not required to investigate the truth or falsehood of the same. It is admitted fact that the Court has wide jurisdiction to allow amendment when it does not prejudice the others. Here, only relief has been claimed, therefore, there is no question of any prejudice to the other side arises nor it can be said that it is mala fide amendment. So far delay of amendment is concerned, on the ground of delay, the amendment cannot be refused. In view of the above facts and circumstances of the case, in my opinion, the impugned order cannot be interfered with in supervisory jurisdiction. Accordingly, this writ application is dismissed.