

(2020) 01 PAT CK 0332

In the Patna High Court

Case No : Civil Miscellaneous Jurisdiction No. 167 Of 2019

Gautam Singh

APPELLANT

Vs

Shiv Narain Sah And Anr

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2020) 01 PAT CK 0332

Hon'ble Judges : Sanjay Karol, CJ

Bench : Single Bench

Advocate : Chandra Kant

Final Decision : Dismissed

Judgement

The petition filed on 11.02.2019 is listed for hearing for the first time today before the Court.

Heard learned counsel for the petitioner and learned counsel for the respondents.

Petitioner has prayed for the following relief:-

"For issuance of writ of certiorari or direction/order or writ for setting aside order dated 25/09/2018, contained in Annexure-1, passed by Munsiff, 1st, Siwan in Title Suit No. 135/1992, whereby and whereunder the learned court has rejected amendment petition of plaintiff."

In terms of the impugned order dated 25th of September, 2018, application filed by the plaintiff seeking amendment of the plaint stands rejected.

Learned counsel for the petitioner assails the order by making the following submissions:-

(a). The suit is at a preliminary stage, inasmuch as, trial has not commenced and, as such, amendment ought to have been allowed;

(b). Amendment sought to be incorporated would not change the nature and

character of the suit;

(c). The amendment brought in the provisions of Order VI Rule 17 of the Code of Civil Procedure by virtue of Act No. 22 of 2002 would apply prospectively and not applicable to cases already instituted prior to the said date.

In support of the aforesaid submissions, learned counsel for the petitioner has referred to and relied upon the following decisions:-

(i). Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors., reported in AIR 2006 Supreme Court 1647

(ii). Pankaja and another Vs. Yellappa (D) by L.Rs. And others, reported in AIR 2004 Supreme Court 4102

(iii). Puran Ram Vs. Bhaguram & Anr., reported in AIR 2008 Supreme Court 1960

Well, there cannot be any difficulty in comprehending the ratio laid down by the Apex Court in the decisions referred to above. It is evident that the law is well settled. Inter alia, what is also required to be seen is as to whether the amendment sought to be brought in is vexatious in nature or the act of the party in seeking amendment is to delay the proceedings or not.

From the copy of the plaint placed on record, it is evident that the suit was instituted on 24th of April, 1992 and in the amendment application filed on 08.10.2018 the factum of date of the plaintiff's dispossession stands recorded to be 13.07.1992. Thus, within less than three months of the institution of the suit, plaintiff was fully aware of such fact which he seeks to bring on record by way of an amendment. Yet, he chose not to incorporate the amendment immediately, but waited for more than 26 years. Even the application is conspicuously silent of the reason for delay or not taking prompt action. Plaintiff has not bothered to place on record the order-sheet from the year 1992 onwards. In the petition he does not dispute or deny the factor of delay in the trial which can be attributed to him. It is shocking that in a suit instituted in the year 1992 trial has not begun.

The Act of 1922 or 2002 amendment or Order VI Rule 17 of the Code of Civil Procedure does not specifically provide the amendment to the Act applicable only with respect to such petitions which stand instituted post notification of the said Act. Applicability of the Act is not with retrospective effect, but its application with prospective effect has to be in terms of the action initiated therein. The enabling provision seeking the instant amendment is the amended Act and not the unamended Act.

The Trial Court correctly appreciated the provision of the Act, Order VI Rule 17 of the Code of Civil Procedure and by applying the same, rightly dismissed the petitioner's application for amendment, holding the plaintiff's action to be nothing but perhaps vexatious in nature. Even in the body of the present petition, nothing is mentioned as to how and why in spite of due diligence, plaintiff was prevented from raising the issue before the court below. Whether or

not amendment is necessary for the purposes of determining the real question in issue or not is a different matter, but then this factor is not the sole reason weighing with the court, that under all circumstances amendment is to be allowed.

The trial court has granted sufficient reasons in rejecting the petition.

As such, for all the aforesaid reasons, the present petition, being devoid of any merit, stand dismissed.