
(1994) 09 PAT CK 0033

In the Patna High Court

Case No : Civil Revision Case No. 76 of 1994

Hira Lal Prasad

APPELLANT

Vs

Satya Narain Mahto and Others

RESPONDENT

Date of Decision : 08-09-1994

Acts Referred:

Citation : (1994) 09 PAT CK 0033

Final Decision : Allowed

Judgement

Ram Nandan Prasad, J.—The Defendant has filed this civil revision application against the order dated 8.12.1993 passed in Eviction Suit No. 8/89, whereby the amendment petition filed by the Plaintiff has been allowed.

2. The Plaintiff filed the eviction suit for eviction of the Defendant from the shop (suit premises) on the ground of personal necessity and also for default in payment of rent. The case of the Plaintiff was that there was a Pucca shop and a thatched shop on, Plot No. 205. He took Rs. 30,000/- from the Defendant for construction of the shop and for giving the same to the Defendant. The Defendant was inducted tenant of both the shops on a monthly rental of Rs. 90/- and 60/- respectively on 1.10.83. The Defendant paid rent till August, 1988 and thereafter he stopped payment of rent from the month of September, 1988. In the plaint it was also stated that he required the suit premises for business by his grandsons who are sitting idle after finishing their studies. The Defendant on demand refused to pay the rent as well as to vacate the suit premises.

3. The Defendant appeared in the suit and denied the allegation made in the plaint. His stand was that Plot No. 205, the suit, premises, belonged to the Plaintiff and it was a Parti land. He approached the Plaintiff for letting out the suit premises which was agreed upon by the Plaintiff and the said vacant land was let out to the Plaintiff on a monthly rental of Rs. 50/-. He also advanced Rs. 10,000/- and subsequently on demand Rs. 20,000/- for the purpose of construction of a shop to the Plaintiff. Thereafter the shop was constructed and was let out to the Defendant with an assurance that the entire amount would be

adjusted towards the monthly rent of the suit premises.

4. The suit was taken up for hearing. After examination of seven witnesses of the Plaintiff, a petition was filed by the Plaintiff on 11.7.91 stating therein that the Defendant in connivance with the office has got paragraph 1 of the plaint interpolated by adding last two lines therein. It was also stated in the petition that the Defendant had obtained certified copy of the plaint twice before filing of the written statement and hence the Defendant should be directed to file both the certified copies which would show the interpolation. A rejoinder to the said petition was filed by the Defendant denying the allegations made by the Plaintiff. The certified copies obtained by him contained the same averments and thus there is no interpolation. The petition was not pressed by the Plaintiff and the evidence of both the parties was closed. Arguments of both the parties were heard on 25.8.92 and the suit was posted for judgment on 31.8.92.

5. On 31.8.92 judgment was not delivered on the ground that the petition filed by the Plaintiff on 11.7.91 relating to committing forgery by adding the two last lines in paragraph 1 of the plaint is pending for disposal. Thereafter the case was adjourned on several dates for disposal of the said petition. On 9.11.92 the Counsel for the Plaintiff submitted that since the case is ready for argument and judgment, he does not prefer to delay the disposal of the suit for the sake of enquiry on the point of interpolation, as alleged by him in the plaint. Learned Counsel for the Plaintiff also submitted that there is no need to dispose of the petition dated 11.7.91 as he is interested in final disposal of the suit.

6. Thereafter the suit was posted for argument on 14.12.92. After arguments of both the parties, the case was again posted for judgment on 12.1.93. On 12.1.93 the judgment was not delivered and the Court directed the Defendant to file both the certified copies which he obtained prior to filing of the written statement. The Defendant pursuant to the said direction filed both the certified copies of the plaint on 18.1.93.

7. The case thereafter was adjourned on several dates and again the Court started hearing arguments of the parties afresh. While the arguments of the Plaintiff were going on a petition was filed on behalf of the Plaintiff on 10.9.93 under Order 6, Rule 17 of the CPC to amend the plaint by deleting the two last lines of paragraph 1 of the plaint. A copy of the petition has been Annexed as annexure "4" to this application. The Defendant filed a rejoinder to the amendment petition stating, inter alia, therein that the amendment sought for is mala fide and would cause such injury to him which cannot be compensated in terms of money. The suit was filed by the deceased Plaintiff according to his personal knowledge which cannot be withdrawn by his heirs.

8. The Court below after hearing, allowed the amendment petition by order dated 8.12.93 which is under challenge.

9. From the discussions made above, a question has arisen as to whether in such facts and circumstances of the case amendment of the plaint is permissible in

law or not? It is the admitted position that earlier the stand of the Plaintiff that the last two lines of paragraph 1 of the plaint have been interpolated by the Defendants in connivance with the office of the Court, but the petition with regard to the aforesaid allegation was not pressed by the Plaintiff. No petition for amendment was filed during the course of examination of the witnesses by the parties. The amendment petition was filed after the judgment of the case was deferred twice and hearing of the plaint was going on third time. The parties adduced evidence on the basis of their pleadings. They acquired valuable right by examining their witnesses. The Plaintiff by the amendment has prayed for deletion of the last two lines in paragraph 1 of the plaint, in which he admitted taking of the advance of Rs. 30,000/- from the Defendant towards construction of shop.

10. In *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, it has been held that:

It is true that inconsistent pleas can be made in the pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the Plaintiff completely from the admission made by the Defendants in the written statement. If such amendments are allowed the Plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the Defendants. The High Court rightly rejected the application for amendment.

11. In the case in hand, the Plaintiffs have admitted taking of advance of Rs. 30,000/- from the Defendants and the parties also adduced evidence on the basis of their pleadings. If the amendment is allowed or order of the Court below is allowed to stand, the Defendant will be displaced completely from the admission made in the plaint.

Thus, I am of the view that the principle decided by the Supreme Court in *M/s Modi Spinning and Weaving Mills Ltd's* case (*supra*) is fully applicable in the facts and circumstances of the present case, The Court below did not consider the aforesaid aspect of the case while passing the impugned order.

12. Besides, as stated above, it is pertinent to mention here that the suit was filed by one Bhallu Mahto and averments were made in the plaint on the basis of his personal knowledge. After his death his heirs, who were substituted in his place, are seeking amendment in the plaint. Earlier the stand of the Plaintiff was that the last two lines of paragraph 1 of the plaint have been forged by the Defendant, but the petition with regard to the aforesaid allegation was not pressed and subsequently when the judgment in the case was postponed twice, the amendment petition was filed, which cannot be said to be bona fide on the facts and in the circumstances of the case. Accordingly, this application is allowed and the impugned order dated 8.12.1993 is set aside. But on the facts and in the circumstances of the case there shall be no order as to costs.

13. Since the case is pending for judgment for about two years, the Court below

is directed to dispose of the suit as early as possible.