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**(1983) 07 OHC CK 0010**  
**In the Orissa High Court**  
**Case No : Civil Revision No. 512 of 1981**

Hundari Bewa

APPELLANT

Vs

Keluni Dei and Others

RESPONDENT

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**Date of Decision :** 25-07-1983

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

**Citation :** AIR 1984 Ori 37 : (1983) 56 CLT 400

**Hon'ble Judges :** R.C. Patnaik, J

**Bench :** Single Bench

**Advocate :** Brajamohan Patnaik and D. Patnaik, for the Appellant; S. Misra, S. Mantry and K. Kar, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.C. Patnaik, J.—Can an admission made by a party in pleadings be withdrawn by amendment ?--this is the short question that arises for consideration in this revision.

2. Opposite Party No. 1 brought an action for partition and sought relief u/s 4 of the Partition Act. She alleged that Banamali, her father, and Anam were brothers and their residential house and homesteads had not been divided. The husband of the petitioner (defendant No. 2), a stranger to the family, purchased the residential house and homestead from Guluri, the daughter of Anam. This was stated to be the cause of action for the suit.

3. The petitioner, widow of the vendee, alleged that there was a partition in the year 1953 and Anam, the father of the vendor, passed away in 1955.

4. During trial the plaintiff proved a sale deed dt. 28-5-1953 executed by Guluri, the daughter of Anam, in favour of Banamali. The said sale deed disclosed that by 28-5-1953 Anam was dead.

5. The petitioner then filed the application for amendment stating : She was not

born either at the time of partition or at the time of the death of Anam. The time of partition and death of Anam were furnished after enquiry from the villagers. During trial when the plaintiff exhibited the sale deed executed by Guluri in favour of Banamali, it was evident that a partition had taken place before 28-5-1953 and Anam had also passed away by then. So, her statement in the written statement was clearly a mistake. On further enquiry it was ascertained from villagers that the partition took place in 1951 and Anam expired in 1952.

6. The plaintiff objected and the learned subordinate Judge rejected the prayer holding that injustice would be caused to the plaintiff if the defendant was allowed to withdraw her admission contained in the written statement regarding the year of partition and the year of the death of Anam.

7. It is worthwhile to preface the discussion by an excerpt from *Cropper v. Smith* (1884) 26 CHN 700 Lord Justice Bowen said ;

"It is well established principle that the object of Courts is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights..... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace..... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice as anything else in the case is a matter of right."

In *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, the Supreme Court observed (at p. 1269) :

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side."

8. The petitioner was not born when either the partition took place or Anam died. Her statement in the written statement was based upon information given to her by some villagers. That the statement was erroneous was evident from the sale deed exhibited by the plaintiff during trial. On further enquiry she came to know that the partition took place in the year 1951 and Anam died in 1952. In such circumstances, she made the application for amendment, for correction of certain statement which was incorrect.

9. The Courts exist for deciding the rights of parties and not to punish them for mistakes they make in the conduct of their cases, and they do not exist for the sake of discipline, but for the sake of deciding matters in controversy, permission to correct an error or mistake should be granted unless it be fraudulent or intended to overreach and where such withdrawal does not cause injustice to the other side, or such injury which may not be compensated by costs. The rules of procedure are intended to subserve justice. Where the court is satisfied that the admission was made by inadvertence or erroneously and there was no mala fide on the part of the applicant, it would be denial of justice not to permit the party to withdraw the admission or correct the mistake. In *Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another*, it was observed (at p. 463) :

".....An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn....."

In *Gobinda Sahoo Vs. Ram Chandra Nanda and Another*, it was said (at p. 37) :

".....Where an admission appears to have been made by inadvertence or erroneously in ignorance of the true legal position due to the fault of the advocate, an amendment may be allowed even though the effect of an admission may be taken away....."

No hard and fast rule can be laid down. Each case would depend on its own peculiar facts and circumstances. But in the balancing exercise what should be kept in mind is the object, that is, dispensation of justice and not mere technicalities which hinder its just dispensation.

10. Being of the view that the statement sought to be corrected as erroneous or inadvertent, I hold that the learned Subordinate Judge exercised jurisdiction erroneously. I, therefore, set aside the impugned order and allow this revision. The petitioner shall, however, pay a sum of Rs. 75/- as costs to the plaintiff within one month from today. When the amendment is carried out, the plaintiff shall be entitled, if she so chooses, to re-examine the witnesses already examined and adduce such other evidence as she may like to. There would be no order as to costs of this Court. The record be sent back immediately and the suit be disposed of within three months hence.