
(1998) 09 PAT CK 0004

In the Patna High Court

Case No : Civil Revision No. 1260 of 1998

Ishwari Nandan Singh and Another

APPELLANT

Vs

Kameshwari Nandan Singh and Another

RESPONDENT

Date of Decision : 15-09-1998

Acts Referred:

Citation : (1999) 1 BLJR 280 : (1998) 3 PLJR 452

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This Civil revision application is directed against the order dated 10.6.1998 passed by the Subordinate Judge I, Patna, in Title (partition) Suit No. 117 of 1995, whereby he has rejected the amendment petition filed by Defendant Nos. 2 and 3 for amendment of the written statement.

2. Brief facts relevant for the purpose of the case are that the plaintiff-Opp-party No. 1 filed the aforesaid Title (partition) suit claiming a decree of partition in respect of the suit properties consisting of a house and buildings situated in the town of Patna and also in the District of Sheohar. In the plaint it was alleged that earlier Title (partition) suit No. 145 of 1971 was filed by Kameshwari Nandan Singh, the plaintiff. The said suit was compromised and a compromise decree was passed, However, the compromise decree was not acted upon, inasmuch as the parties did not partition the property as per terms of the compromise decree. The defendants-petitioners appeared in the suit and filed written statement stating inter alia that the suit is bad for partial partition because the Orchard situated in village Shahbazpur bearing plot No. 180 has been omitted and not included in the plaint which is still in joint possession of the parties. The defendants stated that the said plot is also liable to be demarcated as per compromise decree. In view of the defence taken by the defendants the plaintiffs filed a petition for amendment of the plaint for addition of the aforesaid plot No. 180 in order to avoid any defect in the partition suit. The said amendment

petition was allowed. The defendants-petitioners then filed an amendment petition seeking amendment of paragraph 5 of the written statement. That application was rejected by the impugned order in this revision application.

3. I have heard Mr. Ravi Shankar Prasad, learned Counsel appearing on behalf of the petitioners and Mr. P.N. Roy, learned senior counsel appearing on behalf of the opposite party No. 1 and Mr. Lalit Kishore, learned Counsel for the opposite party No. 2.

4. Mr. Ravi Shankar Prasad, learned Counsel assailed the impugned order as being illegal and wholly without jurisdiction. Learned Counsel submitted that the Court below has committed grave error of law in holding that the proposed amendment will amount to withdrawal of the admission which is not permissible in view of the principle laid down by the Apex Court in the case of Heeralal Vs. Kalyan Mal and Others, . Learned Counsel further submitted that the defendants-petitioners have nowhere admitted that plot No. 180 is still joint and, therefore, the proposed amendment if allowed will not amount to withdrawal of the admission. I do not find any force in the submission of the learned Counsel.

5. For better appreciation of the case, paragraph 5 of the written statement is reproduced herein below:

That the suit is bad for partial partition because the orchard in village Shahbajpur bearing Khata No. 3, plot No. 180 area 6.06 acres which is still in joint possession has been omitted and not included in the plaint. This plot may also be demarcated indicating the particular area already allotted to plaintiff and defendant Nos. 1 and 2 by compromise in Title partition suit No. 145 of 1971 to different co-sharers.

6. From perusal of the amendment petition it will appear that the defendants want to substitute paragraph 5 by the following paragraph:

That the statements made in paragraph 7 of the plaint regarding death of Smt. Sia Devi on 12.12.1972, leaving behind her only heirs the plaintiff and defendants 1 and 2 are correct. But the rest of the contents of the said paragraphs are misconstrued and vague which require a proper exposition. The fact is that after the determination of the respective shares of the parties in the different properties including the orchard in village Shahbajpur in the previous partition suit, namely, T. Suit No. 145 of 1971 as per compromise between the parties, the actual demarcations of the portions in respect of the plot No. 180, khata No. 3, of village Shahbajpur, Area 6.06 acres (have not yet been done) and the parties are enjoying possession in common to the extent of their shares allotted in earlier compromise decree so far but now the actual demarcations as per their portions already determined earlier (may be done) through the Hon'ble Court.

7. From perusal of the original paragraph of the written statement and the proposed paragraph sought to be substituted it is manifest that in the original

pleading the defence of the defendant is that the orchard bearing plot No. 180 is still in joint possession and, therefore, the suit is bad for partial partition because of non inclusion of the said plot. At the same time it was pleaded that the share of the petitioners in the plot so allotted in the compromise decree may also be demarcated. While in the amendment petition the petitioners want to introduce the facts that the said plot has already been partitioned and the parties are enjoying possession in common to the extent of their share so allotted to the parties in the earlier compromise decree. In my view, therefore, the court below was right in rejecting the prayer of the petitioners for amendment of the written statement. As noticed above, it is only because of the defence of maintainability of the partition suit as being barred for partial partition the plaintiffs amended the plaint and included orchard bearing plot No. 180 for partition. The defendants thereafter cannot be allowed to take plea again that the said plot has already been partitioned and the parties are enjoying possession to the extent of their share. It is needless to say that the Court while deciding partition suit will have to decide whether the suit properties including plot No. 180 have been partitioned and are in separate possession as per compromise decree passed in Title suit No. 145 of 1971 or parties have been still continuing in joint possession of all the properties. If it is found that plot No. 180 is still joint, then the court below shall pass a decree for partition in respect of that plot also. The proposed amendment sought by the defendants-petitioners is, therefore, not bona fide.

8. Having regard to the facts and circumstances of the case and the discussions made above, I do not find any reason to interfere with the order passed by the Court below. This Civil revision application is dismissed.