
(1989) 09 PAT CK 0042

In the Patna High Court

Case No : Civil Revision No. 1937 of 1985

Lallan Prasad @ Raghbir Prasad and Others

APPELLANT

Vs

Mangla Prasad and Others

RESPONDENT

Date of Decision : 28-09-1989

Acts Referred:

Citation : (1989) 09 PAT CK 0042

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : S.C. Ghosh and Mr. N.K. Ghosh, for the Appellant; Ajit Kumar Saha, Satya Prakash Srivastava for Opposite Party, Mr. Ratan Kumar and Mr. D.R. Guardian for Opposite Party Nos. 5 to 7, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This petition is directed against an order dated the 10th September, 1985, passed by Shri C.K. Singh, Munsif Patna City, in Title Suit No. 1 12 of 1976 whereby and whereunder he allowed the application for amendment of the written statement filed on behalf of the defendants Opposite Party.

2. Facts of this case lie in a very narrow compass. The petitioner filed Title Suit No. 1 12 of 1976 for eviction of the defendants on the ground of personal necessity and also on default. It appears that, on the 8th February, 1980 the defendants filed written statement. In the written statement, the defendants allegedly stated that the plaintiff's grand-father Bisun Shao and the defendants grand father Janki Ram were relations and partners. According to the defendants, the original tenant Shayam Lal was a resident to Gola Bazar, U.P., and used to come to Patna to look after the business. It was, further stated that the plaintiff was not the absolute owner of the property. The defendants further denied the relationship of landlord and tenant and claimed themselves to be the owners. It was further stated that there had been earlier suits bearing Title Suit No.22 of 1961 and Title Suit No.23 of 1961 during the pendency whereof an

agreement for sale was arrived at for a consideration of Rs. 16,000/- whereby and whereunder the Plaintiff intended to transfer his share in favour of the defendant where for an agreement of sale was executed on the 23rd February, 1964.

3. According to the original written statement filed on behalf of the defendant Opposite Party the period during which the said agreement for sale was to remain valid was 4 years, i.e., till 1968. Thereafter on or about the 31st August, 1982, an application for amendment of written statement was filed on behalf of the defendant opposite party in which it was contended that a mistake was committed in mentioning the period of four years in the aforesaid agreement dated 23rd February, 1964, and, in fact, the said period would be ten years.

4. It appears from the counter-affidavit filed on behalf of the opposite party that the said application for amendment was destroyed by termites and later on the Court directed the defendant opposite party to file another application for amendment of the written-statement. It is in this situation that the aforesaid application for amendment the written-statement was taken up for hearing in the year 1985 and the impugned order was passed.

5. Mr. S.C. Ghosh, learned counsel appearing on behalf of the petitioners, submitted that, by reason of the amendment sought for by the defendant-opposite party they seek to set-up absolutely a different case to get rid of the express admission made in the earlier written statement. According to the learned counsel, the opposite party cannot be permitted to raise a new plea which was not pleaded in the original written statement. It was further contended that in view of the fact that in the earlier written statement the defendants admitted that the agreement was to remain valid till 1968 and the sale-deed was executed in 1964 and now they cannot contend that the said period was ten years instead of four years.

In this connection, the learned counsel has relied upon a decision of the Supreme Court in the case of Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., .

6. The learned counsel for the opposite party, on the other hand, submitted that, in the circumstances of this case, the defendants are not guilty of any delay or laches nor the application for amendment was filed mala fide. According to the learned counsel, a photostat of the agreement for sale dated the 28th November, 1975, was filed along with the written statement after showing the original to the learned Court below. According to the learned counsel, therefore, a copy of the agreement was available on the records of the case and the said application was filed as there was a clerical mistake.

The learned counsel in this connection has placed reliance on a decision of the Supreme Court in the case of Ganesh Trading Co. Vs. Moji Ram, , as also of this Court in the case of Ram Avtar Sharma v. Jagdish Ram and others, 1984 BBCJ 505; 1984 BLJ 484.

7. Having heard the learned counsel for the parties, I am of the opinion that the learned Court below has not committed any illegality in passing the impugned order. It is well settled principle of law that the application for amendment of pleadings should be liberally allowed. In *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, , the Supreme Court has clearly held that a party should not be allowed to suffer only because of some mistakes or negligence on his part. The aforesaid ratio has also been considered in the decision of the Supreme Court cited by the learned counsel for the opposite party as also by this Court.

Further, it is well known a proposition of law that an amendment of the written statement should be more liberally allowed than the amendment of the plaint.

Reference in this connection may be made to the cases of *Pandit Ishwardas Vs. State of Madhya Pradesh and Others*, ; *Maitreyee Banerjee Vs. Prabir Kumar Mukherjee*, ; and *Mulk Raj Batra and Others Vs. District Judge, Dehra Dun and Others*, .

Further, so far as the argument of Mr. Ghosh that in the original written statement the defendants had made certain admission in concerned, in my opinion, the same has been substance at all. In this view of the matter, the decisions cited by the learned counsel for the petitioner has no application on the facts and in the circumstances of this case.

However, it may be observed that, in a later decision of the Supreme Court in the case of *Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another*, , this aspect of the matter while deciding the question of amendment of plaint was considered and it was held that admission can be withdrawn or explained away.

8. However, on the facts and in the circumstances of this case, it is evident that, in view of the fact that the defendants opposite party had already filed a photostat of the agreement in question, in my opinion, the contents thereof could be gathered from the said agreement itself. If an amendment is sought for with reference to a date or similar such thing and which plea is supported by a written instrument, such application for amendment is always allowed.

Reference in this connection may be made to a decision of this Court in the case of *Dund Bahadur Singh and Others Vs. Lal Bahadur Singh and Others*, .

9. In view of what has been found herein before, in my opinion, there is no merit in this application which is, accordingly, dismissed.