

(2020) 02 JH CK 0023

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6348 Of 2014

Nizamuddin Ansari And Ors

APPELLANT

Vs

Bhagmani Kuer And Ors

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 6 Rule 17

Citation : (2020) 02 JH CK 0023

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sanjay Kumar Tiwari, Shailendra Kumar, Naveen Kumar Ganjhu

Final Decision : Dismissed

Judgement

Heard Mr. Sanjay Kumar Tiwari, learned counsel for the petitioner, Mr. Shailendra Kumar, learned counsel assisted by Mr. Naveen Kumar Ganjhu, appearing for the respondents.

Petitioners have preferred this writ petition for setting aside order dated 25.08.2014 passed by the learned Civil Judge (Junior Division) II (Munsif)

Garhwa in Title Suit No. 52 of 2006.

Mr. Sanjay Kumar Tiwari, learned counsel for the petitioner submits that petition filed under Order VI, Rule 17 r/w Section 151 C.P.C, has been

rejected by the court below. He further submits that the amendment was sought for in the written statement by way of said application to the effect

that land was allotted to Uchit Narayan Singh and others but in the said para 10 of the written statement, it has been mentioned that only Uchit

Narayan Singh & other left and also inadvertently mentioned in the said para that suit land was succeeded by his widow Lawangwas Devi which was

subsequently, sold by her to the father of the defendants after death of his father Uchit Narayan Singh and in place of Uchit Naryan Singh as father of

Narmadeshwar Singh, Haribansh Singh is required to be inserted. He further submits that court below has not considered this and rejected the petition

of the petitioner on that ground that it will change the nature of suit and right, title and possession of the Uchit Narayan Singh admitted by the

defendant in their written statement. He submits that the Trial Court has not considered that impleading is necessary to decide the disputed question of

fact. He further submits that the case of the petitioner is fully covered in view of the judgment rendered by the Honâ??ble Suprme Court in the case

of â?? Estralla Rubber Vs. Dass Estate (P). Ltd)â?? reported in (2001) 8 SCC 97.

Per contra, Mr. Shailendra Kumar, learned counsel for the respondents submits that there is no illegality in the impugned order . By way of referring

para 10 of the written statement of the defendant, he submits that the petitioner has admitted in para 10 of the written statement there was Partition

Suit No. 28 of 1922 among the co-sharer of the joint khatas and the land 1.06 acre of plot no. 1363 of khata no. 21 was allotted to Uchit Narayan

Singh. It was also admitted that above 1.06 acres of land was khas possession of Uchit Narayan Singh. He further submits that in view of the matter,

the trial court has rightly came to the conclusion that allowing the said amendment amounts to deny the admission made by the defendant.

To buttress his argument, learned counsel for the respondents relied on a judgment of the Honâ??ble Supreme Court in the case of â?? M/s Modi

Spinning & Weaving Mills Co. Ltd. & Another Vs. M/s Ladha Ram & Co.â?? reported in AIR 1977 SC 68 iOn which Honâ??ble Supreme Court has

held as under:-

â??6. The defendant/s appellants approximately 3 years after the filing of the written statement made an application for amendment of the

written statement. The proposed amendments were for deletion of paragraphs 25 and 26 and for sub-stitution of two new paragraphs 25

and 26. The proposed amendment in para 25 was that by virtue of the agreement the plaintiff was appointed a mercantile agent and the

plaintiff acted in that capacity in placing orders on the defendants. The defendants further denied the allegation of the plaintiff that the

plaintiff placed orders with the defendants in the plaintiff's capacity as a

purchaser. The defendants also alleged that the plaintiff throughout acted as an agent of the defendants. In paragraph 26 of the proposed amendment it was alleged by the defendants that being a mercantile agent and an agent of the defendants in accordance with the terms of the agreement the plaintiff has no locus standi to file the suit.

7. The trial Court rejected the application of the defendants for amendment. One of the reasons given by the trial Court is that the defendants wanted to resile from admission made in paragraph 25 of the written statement. The trial Court said that "the repudiation of the clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law." The trial Court held the application for amendment to be not bonafide.

10. It is true that inconsistent pleas can be made in 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 admissions 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 and agreed with the trial Court.

This Court perused the impugned order dated 25.08. 2014 and also perused paragraph no. 10 of the written statement which has been annexed as Annexure-2 and in view of admission in para 10 of the said written statement of the defendant, it transpired that if such amendment is allowed, plaintiff will be irretrievably prejudiced by denying the opportunities of the extract admission from defendant. In that view of the matter, there is no illegality in the impugned order of the Trial Court, therefore, no interference is required. Accordingly, this writ petition is dismissed.