

**(2007) 01 JH CK 0024**  
**In the Jharkhand High Court**  
**Case No : WPC No. 37 of 2006**

Purendra Munda and Others

APPELLANT

Vs

Pradhan Singh Munda and Others

RESPONDENT

**Date of Decision :** 11-01-2007

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151 , 152  
Constitution of India, 1950 — Article 227

**Citation :** (2007) 01 JH CK 0024

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

**Bench :** Single Bench

**Advocate :** K.P. Choudhary and A.R. Choudhary, for the Appellant; M. Patra, for the Respondent

**Final Decision :** Allowed

## **Judgement**

M.Y. Eqbal, J.—In this writ application under Article 227 of the Constitution of India the defendants-petitioners have challenged the order dated 21.9.2005 passed by Sub-Judge-I, Khunti in Partition Suit No. 20 of 1992 whereby the application filed by the plaintiff under Order VI Rule 17 of the CPC for amendment of the plaint has been allowed.

2. The case of the Plaintiff-respondent No. 1, in brief, is as under:

Plaintiff-respondent No. 1 filed Partition Suit No. 20 of 1992 in the Court of Munsif, Khunti against the petitioners and proforma Respondents for decree of partition in respect of their share in the suit property. Defendants-petitioners appeared in the suit and filed written statement and pleaded that there is no unity of title and possession between the parties and the genealogical table given in the plaint is also not correct. It was pleaded that plaintiff and the proforma Respondents are not entitled to any relief. The suit was eventually transferred to the Court of Sub-Judge, Khunti on the ground of pecuniary jurisdiction. The suit was decreed and preliminary decree was prepared on 20.3.1997. Thereafter, proceeding for preparation of final decree was initiated and Pleader

Commissioner was appointed, who submitted his report. It is stated that while hearing on the Pleader Commissioner's report was going on, plaintiff filed application on 8.1.2004 u/s 152 of the C.P.C for amendment of the judgment to the effect that defendant Nos. 1 to 5 (petitioners) along with proforma defendant Nos. 6 and 7 together have 1/4th share in the suit property. The Court below after hearing the parties rejected the petition by order dated 9.8.2004. Plaintiff-respondent No. 1 then filed application on 31.5.2005 under Order VI Rule 17 read with Section 151 of the CPC for amendment of the plaint stating inter alia that at the time of drafting of the plaint, a mistake occurred in the cause title of the plaint and therefore, plaintiff proposed to declare defendant 10, 11, 12 to 15 as proforma defendants and the rest of the proforma defendants be declared as defendants. The said amendment was opposed by defendant/petitioners by filing rejoinder. The Court below after hearing the parties allowed the amendment petition by passing the impugned order. Hence, this application.

3. I have heard the learned Counsel appearing for the parties and perused the impugned order.

4. The plaintiff-respondent No. 1 filed the aforementioned Partition Suit No. 20 of 1992 against the petitioners-defendant Nos. 1 to 5 and also against the proforma defendants-respondents No. 2 to 15. The plaintiff's case was that his share along with proforma defendants is half and the remaining half share belongs to the defendants. In the said suit, a preliminary decree was passed wherein it was held that the plaintiff along with proforma defendants have half share in the suit property. During preparation of the final decree, plaintiff filed a petition u/s 152 of the C.P.C. for amending the judgment claiming that defendant Nos. 1 to 5 along with proforma defendant Nos. 6 and 7 together have 1/4th share in the property. The said application was opposed by the petitioners and the Court below rejected the said petition by order dated 9.8.2004.

5. The plaintiff again filed another petition purported to be under Order VI, Rule 17 CPC making the same prayer for amendment of the pleadings to that effect on the ground that he is a rustic villager having no knowledge of legal matters and so he did not instruct his counsel about the fact that defendant Nos. 1 to 5 and proforma defendant Nos. 6 to 9 and 16 to 19 ought to be the defendants. In the said petition, the plaintiff prayed for amendment of the cause title by declaring defendant Nos. 10, 11 and 12 to 15 as proforma defendants and the rest proforma defendants to be declared as defendants. The said petition was allowed by the impugned order.

6. Admittedly, the Court below passed a preliminary decree in the partition suit declaring specific share of the parties in the suit property. The Court below held that the plaintiff along with proforma defendants have got Half share in the suit property. The Court below allowed the amendment petition mainly on the ground that the amendment, sought for, is permissible at any stage till the preparation of the final decree. The Court below further held that the proposed amendment sought by the plaintiff will not change the nature of the suit, but it will certainly

affect the share of the parties declared in the judgment and in the preliminary decree.

7. It is surprising that inspite of noticing all these facts, the Court below allowed the amendment petition. In my opinion, the proposed amendment if allowed, will alter the judgment and the decree passed in the suit. Hence, such amendment should not have been allowed. In that view of the matter, the Court below appears to have committed serious error of law in allowing the amendment petition. The impugned order, therefore, cannot be sustained in law

8. For the aforesaid reasons, this writ application is allowed and the impugned order 21.9.2005 passed in Partition Suit No. 20 of 1992 is set aside.