

(1968) 07 PAT CK 0029
In the Patna High Court
Case No : Civil Rev. No. 644 of 1967

Rambachan Rai @ Bachan Rai and Another	APPELLANT
Vs	
Baijnath Rai and Others	RESPONDENT

Date of Decision : 10-07-1968

Acts Referred:

Citation : (1968) 07 PAT CK 0029

Hon'ble Judges : U.N. Sinha, J

Bench : Single Bench

Advocate : Lal Narain Sinha, A.G. and L.M. Sharma, for the Appellant; Kailash Roy, Parimal Chandra Das, Kamla Prasad Roy and Krishna Prasad Singh, for the Respondent

Final Decision : Allowed

Judgement

U.N. Sinha, J.—This application has been filed by the defendants first party and it is directed against an order passed by the learned Additional Subordinate Judge, 2nd Court, Sasaram disallowing an amendment in the written statement prayed for by them. The proposed amendment was insertion of a new paragraph in the written statement, numbered as Paragraph 39A, containing a statement that in case the genealogy given by the plaintiffs was established, one Ram Naresh Rai, father of defendant no. 2 was the next reversioner of Madho Rai and therefore, the plaintiffs were excluded from inheritance. This amendment proposed by the defendants have been disallowed on the ground that the amendment will take the plaintiffs by surprise and that the defendants will, by the amendment, make out an entirely net case to the effect that Ram Naresh Rai was alive when Sona Kuer, widow of Madho Rai, had died. According to the learned Judge, several witnesses have been examined by the plaintiffs and they will be prejudiced if this amendment be allowed. Having heard learned counsel for the parties, I am of the opinion that the amendment proposed by the petitioner defendants will not alter the nature of the defendants case at all nor would it prejudice the plaintiffs" case. All that the petitioner--defendants wish to allege and prove is that the time

when the inheritance had opened, Ram Naresh Rai was the next reversioner, even on the genealogy relied upon by the plaintiffs. Learned counsel for the parties have not shown any material from which it can be said that the evidence has already come on the record that Ram Naresh Rai was dead at the time of the death of Sona Kuer and, therefore, any evidence which may be led later on to the effect that Ram Naresh Rai was alive at the time of the death of the lady cannot be said to be evidence adduced at a late stage to alter the original stand or to change the definite case already made out. It is clear that even when this amendment was not prayed for, it was open to the defendants' first party to adduce evidence to the effect that Ram Naresh Rai was alive at the time of Sona Kuer's death and the rejection of the proposed amendment will really be prejudicial to these defendants. Apparently, these defendants want to proceed on the alternative case, if the plaintiffs genealogy is held to be true. I do not see how this can be said to be a new stand taken by these defendants. In my opinion, the proposed amendment is necessary for the settlement of the controversies arising between the parties in this suit and it should have been allowed by the learned Judge. I would, therefore, reverse this part of the order of the learned Judge and direct him to allow this amendment proposed by the defendants' first party. Learned counsel for the plaintiffs has said that if necessary, his clients should be permitted to re-call the witnesses already examined by his clients for rebutting this case of the defendants' first party set up now. There cannot be any objection to this procedure, and if necessary, the trial court should allow the plaintiffs all latitude permissible under the law for rebutting the case now made out by the defendants' first party in their amended written statement.

2. In the result, the application is allowed, but without costs.