
(2005) 08 PAT CK 0015
In the Patna High Court
Case No : C.R. No. 1159 of 2005

Shiv Gopal Sah @ Shiv Gopal Sahu

APPELLANT

Vs

Sita Ram Saraugi and Others

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2005) 4 PLJR 737

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Pramod Kumar Sinha, Rakesh Kr. Sinha and Arvind Kumar Sharma, for the Appellant; Yogesh Pd. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The petitioner is aggrieved by order dated 27.5.2005 passed by the Additional Munsif-V, Munger in Title Suit No. 17/1991, whereby the petition filed by the plaintiff-opposite, party Nos. 1 and 2 for amendment of the plaint has been allowed. The plaintiff-opposite party filed Eviction Suit No. 11/86 against Ram Charitra Sahu @ Kailu Sahu, father of the petitioner. The father of the petitioner appeared in the said suit and filed written statement denying the title of the plaintiff-opposite party. The court thereafter allowed to convert the Eviction Suit No. 11/86 into a regular suit i.e. Title Suit No. 17/91 and directed to pay ad valorem court fee and also to amend the pleadings. During pendency of the suit the plaintiff-opposite party sold the suit property to Bijay Kumar Yadav and Manju Devi, opposite party second set. They filed an application for being added as co-plaintiffs, which was allowed on 22.5.2004, against the said order CR. No. 764/2004 was also dismissed as withdrawn on 29.8.2004. The suit was taken up for hearing. The plaintiff-opposite party 1st set filed a petition for amendment under Order 6 Rule 17 C.P.C. challenging the sale deed executed in favour of the original defendant, father of the petitioner, and also for their transposition as defendants in the suit as they had sold the property in favour of

opposite party 2nd set. The petitioner filed rejoinder to it raising the question of limitation that the amendment proposed is barred by limitation. The court below allowed the amendment by the order impugned.

2. The submission of the learned counsel for the petitioner was that the sale deed was executed much earlier, the proposed amendment is barred by law of limitation. On the other hand, counsel for the opposite party submitted that since in the written statement question of title has been raised the amendment of the plaint was necessary.

3. On consideration of the submissions of the parties and the materials available on the record this much is obvious that initially suit for eviction was filed which was converted into a regular suit when the question of title was raised by the original defendant, father of the petitioner. Subsequently, the suit property was sold to opposite party second set in the year 1997 and thereafter the purchasers, the opposite party 2nd set, were transposed as co-plaintiffs in the suit. The plaintiffs-opposite party filed the amendment petition challenging the sale deed executed in favour of the father of the petitioner and also for their transposition as defendants as they had sold the suit property in favour of co-plaintiffs-opposite party 2nd set. The said amendment has been allowed by the impugned order.

4. In this regard it would not be out of place to mention herein that it is well established rule of law that for complete justice between the parties, to minimize the litigation and to prevent unnecessary harassment the amendment of the pleadings can be allowed. In the case of Pankaja & Anr. vs. Yellapa(D) by L.Rs, and Ors., 2004(4) BBCJ IV-157, the amendment was rejected on the ground of being sought at the belated stage and also that it introduced a different relief from what was originally asked for. The Apex Court, however, on consideration has held, "the Court has wide power to permit amendment even in a case where there has been substantial delay in filing such amendment application. The dominant purpose of allowing the amendment is to minimise the litigation, it is always open to the Court to allow application in spite of delay and laches in moving such amendment application. There is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. The grant of amendment really subserves the ultimate cause of justice and to avoid further litigation. "In the case of Prem Bakshi and Others Vs. Dharam Dev and Others, the Apex Court has held, "it is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible that is refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea, which a party might take up. Hence the Court cannot envisage a situation where amendment of pleading, whatever be the nature of such amendment, would even remotely cause failure of justice and irreparable injury

to any party." In the case of Raj Kumar vs. Dipender Kaur Sethi, AIR 2004 SCW 7179, the suit was filed for permanent injunction restraining the defendant from alienating the suit property. Thereafter the amendments allowed to be made in the plaint by the trial court were to convert it into a suit for specific performance of contract. The Apex Court held that it would not change original controversy between the parties and no injustice would cause to the defendants and the amendment allowed by the trial court was held to be justified.

5. In the instant case the amendment, as prayed for, would not change the original controversy between the parties, rather it is necessary for complete justice and to minimise the litigation between the parties. Thus on consideration as discussed above, I find no error in the order impugned. Accordingly, the revision petition is dismissed.