
(2004) 12 PAT CK 0086
In the Patna High Court
Case No : Criminal No. 1134 of 2002

Shivashray Choudhary

APPELLANT

Vs

Most. Jagotarini Devi and Others

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

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

Citation : (2005) 1 PLJR 478

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Tuhin Shankar and Dileep Kr. Singh, for the Appellant;

Judgement

S.N. Hussain, J.—Learned counsel for the petitioner is present. No one appears for the opposite parties although notices were issued to them and opposite parties No. 1 to 3 have appeared through Vakalatnama and the names of their learned counsel have been appearing on the daily cause list of this Court. In spite of the aforesaid facts no one is appearing for the opposite parties since September, 2004, resulting in several adjournments on that ground. On 30.11.2004 learned counsel for the petitioner submitted that on the next date he will be ready to argue the case, however, no one had appeared for the opposite parties. Today also when the case was called out, no one had appeared on behalf of the learned counsel for the opposite parties, whereas learned counsel for the petitioner is present and has been heard. The petitioner along with opposite party No. 15 is the plaintiff of Title Suit No. 16 of 1997, which was filed by them for declaration of right, title and share to the extent of 15 paise each in respect of the suit property, which is a petrol pump being run in the name and style of M/s Tarakant Thakur Ramashray Choudhary and also for an order of injunction restraining the defendants from interfering with the suit property and also for carving out the respective individual shares of the plaintiffs out of the said property.

2. Learned counsel for the plaintiff-petitioner is aggrieved by order dated

22.5.2002 passed in the aforesaid suit, by which the learned Subordinate Judge I, Benipur (Darbhanga) rejected the petition for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure. While challenging the impugned order learned counsel for the petitioner relies upon two decisions of the Hon''ble Supreme Court, namely, in the case of Prem Bakshi & Ors. vs. Dharam Dev & Ors. reported in 2002(2) P.L.J.R. (SC) 187 and in the case of Pankaja and another vs. Yellappa(D) by L. Rs. and others reported in 2004 AIR SCW 4522.

3. In the case of Prem Bakshi (supra) the Hon''ble Supreme Court has held as follows:

"6.....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 i.e. 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 we cannot envisage a situation where amendment of pleadings whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party."

4. In the case of Pankaja (supra) the Hon''ble Supreme Court has held as follows:

"14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really sub serves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

5. In view of the aforesaid clear decisions of the Hon''ble Supreme Court the impugned order of the learned court below rejecting the amendment sought by the plaintiffs is quite illegal and the learned court below has failed to exercise the jurisdiction vested in it by law.

6. In the aforesaid circumstances, the impugned order of the learned court below is set aside and it is directed to allow the plaintiffs to amend their plaint according to the amendment sought. This civil revision is, thus, allowed.