
(1996) 07 PAT CK 0004
In the Patna High Court
Case No : C.R. No. 1290 of 1994

Shri Panna Lal Maharaj

APPELLANT

Vs

Shri Birendra Narain Singh

RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

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

Citation : (1996) 2 PLJR 483

Hon'ble Judges : Dharmpal Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dharmpal Sinha, J.—Heard learned Counsel for the Petitioner. Counsel for the Opp. party does not appear despite service of notice.

2. In this revision petition, the Petitioner has questioned the legality of the order dated 26.8.1993 passed by the Munsif 1st Court, Manger, in Title suit No. 3 of 1993, whereby the learned Munsif has rejected the petition which has been filed under-Order VI, Rule 17 of the CPC (the Code) praying for amendment of the plaint.

3. From the amendment proposed in the petition, a copy of which is annexure 1, it appears that the Petitioner wanted one paragraph to be added containing assertion that the Petitioner had his land contiguous to the house of Mohan Meharia and the Defendant had made a pucca wall on the east of the aforesaid land. The Petitioner further proposed that the Relief be added that the new wall made by the Defendant at the eastern end of the land of the Petitioner be removed by the Defendant within the time fixed by the Court. Learned Court below has rejected the petition giving the following reasons:

The analysis of the submissions made on behalf of both the sides makes clear that in petition dated 1.4.1991 filed on behalf of the Plaintiff in connection with addition of new Para 3(c) and relief Clause (b) In the plaint relates to different

and Anr. allegation of the Plaintiff against the Defendant and is based on entirely new facts and different cause of action against the Defendant and in this regard specific objection raised by the Defendant relating to the detailed description of the said land, valuation of the suit land and nature of the relief claimed by the Plaintiff are not unfounded. In the totality of the circumstances I find that the petition dated 7.2.1991 filed on behalf of the Plaintiff does not create new ground in the suit. In view of the objections raised by the Defendant in this regard application is not maintainable.

4. The contention of the learned Counsel for the Petitioner is that the Petitioner has instituted the suit alleging that in the same land the Defendant had made Chajja, opened door and windows and during the pendency of the suit, new wall was constructed on the same piece of land in such a situation the proposed amendment was necessary. According to his submission since the wall had been constructed on the same land by the Defendant, reasoning of the learned Court below that no different cause of action has arisen and only new fact is said to be added and so the petition cannot be allowed, is misconceived.

5. There seems to be some force and substance in the contention of the learned Counsel for the Petitioner. In the suit before the amendment the Plaintiff-Petitioner had alleged that he had his own land bearing plot Nos. 3989 and 3990 and the suit had been instituted for removal of encroachment and trespassed that has been made by the opposite party and if the wall was constructed on the same piece of land during the pendency of the suit, the amendment was necessary for finally, completely and effectively determining the issue involved and there could be no question of raising a new issue, if some development takes place during the pendency of the suit in connection with the new property which is already involved in order to pass final and effective decree in a case like this the said amendment should be allowed.

6. In this view of the matter, this petition is allowed, the impugned order dated 26.8.1993 is set aside and the amendment as proposed by the Plaintiff Petitioner shall stand allowed and the plaint will stand accordingly amended.