
(2010) 12 PAT CK 0075
In the Patna High Court
Case No : CWJC No. 9957 of 2010

Sri Yogendra Prasad Sinha and Another	APPELLANT
Vs	
Sri Girdhar Pd. Sinha and Others	RESPONDENT

Date of Decision : 09-12-2010

Acts Referred:

Citation : (2010) 12 PAT CK 0075

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioners and the learned Counsel for the Respondent No. 1.

2. Learned Counsel for the parties are unanimous in their submission that no notice need issue to Respondents 2 to 10 as they are only formal parties.

3. The Petitioners who are stated to be Defendants in Title (Partition) Suit No. 251 of 2007 pending before the Subordinate Judge-IV at Patna City are aggrieved by the impugned order dated 3.5.2010 by which their prayer for amendment of the written statement has been refused on the ground that by the amendment they seek to withdraw the admission made by them earlier.

4. The subject matter of the suit are three plots bearing Nos. 1521, 1522 and 1525.

5. Learned Counsel for the Petitioners submits from the amendment application that it is more than apparent from the pleadings that no admission was sought to be withdrawn. The stand of the Petitioners in their earlier written statement and in the amendment was consistent of an earlier partition with regard to the properties and it could not be partitioned freshly again. The counter claim was sought to be raised in the background of the statement that if the Respondent No. 1 does not admit the previous partition, in that event the Petitioner made a counter claim for partition. The Respondent was concealing the earlier partition.

6. Learned Counsel for Respondent No. 1 relied upon a judgment of the Supreme

Court in Heeralal Vs. Kalyan Mal and Others, to submit that once a stand has been taken in a written statement the Defendant cannot be allowed in the guise of amendment to withdraw an admission made earlier by amendment of written statement as that would fundamentally affect case of the Plaintiff and shall change nature of the suit. He next relies upon the decision of the Supreme Court in Prem Bakshi and Others Vs. Dharam Dev and Others, to submit that these issues can be raised by the Petitioner in appeal also.

7. The principle deduced in the case of Heera Lal (supra) is that once a written statement contains an admission in favour of the Plaintiff, by an amendment the Defendant cannot be allowed to withdraw such admission displacing the case of the Plaintiff which would cause him irretrievable prejudice.

8. The short question for consideration presently is whether by the amendment the Petitioners seek to retract any statement or admission made by them in the earlier written statement. On going through the pleadings contained in the amendment of the written statement prayed for, this Court is satisfied that the Petitioners do not give up their original claim of a partition already having taken place. They only urge that if the Respondent No. 1 does not admit their claim of a previous partition then in that event the properties be partitioned again. There is no withdrawal of any admission by them inasmuch as they do not rescile from the earlier stand that there has been a partition. A plea sought to be taken in the amended written statement mutually destructive with that taken by them in the earlier written statement cannot be permitted but in inconsistent pleas stand on a different footing. In view of the fact that this Court has arrived at the conclusion that the Petitioners by the proposed amendment do not seek to raise inherently contradictory and mutually destructive plea this Court is satisfied that the case of Prem Buxi (supra) in the facts of the present case has no application.

9. In Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., at paragraphs 15 and 16 it has been held as follows:

15. Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the trial court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the trial court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the Appellants in their application for amendment of the written statement, excepting the plea taken by the Appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the Plaintiff cannot be

allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16. This being the position, we are therefore of the view that inconsistent pleas can be raised by the Defendants in the written statement although the same may not be permissible in the case of plaint. In *Modi Spg. and Wvg. Mills Co. Ltd. v. Ladha Ram & Co.* this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the trial court had gone wrong in holding that the Defendant-Appellants are not allowed to take inconsistent pleas in their defence.

10. In that view of the matter this Court is satisfied that the impugned p order dated 3.5.2010 is not sustainable. It is accordingly set aside.

11. The writ application stands allowed.