

(1997) 11 PAT CK 0019

In the Patna High Court

Case No : Civil Revision No"s. 1654 and 1666 of 1997

Sukhdeo Mandal

APPELLANT

Vs

Kailu Ram
 Bhagwan Narain Choudhary and Others Vs
Bauki Ram and Others

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

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

Citation : (1998) 2 BLJR 1179 : (1998) 1 PLJR 81 : (1998) 1 PLJR 605

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

Bench : Single Bench

Judgement

S.N. Jha, J.—These two civil revisions are directed against the same order dated 3.7.97 passed by the 6th Subordinate. Judge, Bhagalpur, in Title Suit No. 329 as 1984 allowing amendment in the plaint.

2. Plaintiffs, 26 in number, have filed the aforementioned suit for declaration that they have got full right, title and interest in the suit property in which the defendants have no right, title or interest by virtue of the entries in the survey record of rights. The plaintiffs are the descendants of Muni Ram, Pirthi Ram, and Gaibi Nath Mandal. According to them their said ancestors were Raiyats of 4 bighas 13 kathas of Bhit land and 2 bighas 1 katha of homestead land under Babu Suraj Mohan Thakur and Suresh Mohan Thakur, ex-landlords. At the time of veeting of the estate, the said landlords filed returns with respect to the lands in question in their names. Accordingly Jamabandi was created in their names. The plaintiffs claim to be in possession of the lands and to have paid up to date rent. However, during recent municipal survey the lands in question were recorded in the name of Laxmi Narayan Choudhary, predecessor-in-interest of the defendants casting cloud of doubt over plaintiffs" right, title and interest. Hence the suit.

3. On 3.3.97 plaintiff Nos. 2 to 11, opposite party Nos. 1 to 10 herein (descendants of the aforesaid Muni Ram) filed an application under Order VI Rule

17 of the CPC for amendment of the plaint seeking substitution of new paragraph Nos. 1 to 2 in place of the original paragraphs 1 and 2 other amendments. According to proposed paragraphs 1 and 2 Babu Pran Mohan Thakur, the ex-landlord of Barari estate settled 6 bighas 19 kathas land consisting of two plots, one having an area of 2 bighas 6 kathas another having an area of 4 bighas 13 kathas with the said Muni Ram by virtue of Hukumnama dated 30.9.1919. After the Collectorate Batwara between the heirs of Babu Pran Mohan Thakur, the bigger block having an area of 4 bighas 13 kathas fell in the share of Babu Suraj Mohan Thakur, who by granting receipt in the year 1338 Fs. confirmed the Raiyati rights of Muni Ram, the smaller block of 2 bighas 6 kathas fell in the share of Babu Naresh Mohan Thakur, who also confirmed the Raiyati rights of Muni Ram by granting separate receipts in the year 1338 Fs. At the time of vesting of the estate under the Bihar Land Reforms Act, Muni Ram was in exclusive possession as a Raiyat. However, Pirthi Ram and Gaibi Nath Mandal by bringing the Amalas of the Barari estate in their collusion manoeuvred to get their names recorded along with that of Muni Ram without his (Muni Ram) knowledge and consent. After long lapse of time it transpired that the ex-landlord had submitted returns in respect of 4 bighas 13 kathas in the joint names of Muni Ram, Pirthi Ram and Gaibi Nath Mandal, and another return in respect of 2 bighas 6 kathas land in the name of Muni Ram. Plaintiff Nos. 2 to 11, accordingly, also prayed that they be designated as plaintiffs 1st set and the remaining plaintiffs as defendants 2nd set. They also prayed for certain other amendments which appear to be rather formal in nature and, accordingly, not subject matter of controversy. The proposed amendments have been allowed by the impugned order.

4. The impugned order has been challenged both by the so called plaintiffs second set in C.R. No. 1654 of 1997 and the defendants in C.R. No. 1666 of 1997. Mr. Md. Shah Jehan Ali, learned Counsel for the petitioners in C.R. No. 1654 of 1997, submitted that the impugned order is likely to cause serious prejudice to the petitioners, for it amounts to changing their status from Raiyats to under Raiyats (under so called plaintiffs 1st set). He also submitted that the amendment, if allowed to stand, would change the nature of the suit. Learned Counsel for the plaintiff Nos. 2 to 11 (Opp. party Nos. 1 to 10) submitted that having regard to the inter se dispute between the plaintiffs, it may not be proper to allow them to prosecute the suit jointly, which is likely to create difficulties both to the Court as well as to the parties; it would, therefore, be appropriate to transpose one of the sets to the category of defendants. He submitted that the proper course would be to transpose the petitioners herein to the category of defendants because as defendants they can not only contest the plaintiffs' claim but also establish that they are Raiyats with respect to the lands in question in their own right.

5. The case sought to be made out in regard to the acquisition of lands is certainly at a variance with the case pleaded earlier. And this is not all. Plaintiff Nos. 2 to 11 also seek to change the status of the other plaintiffs unilaterally

from Raiyats to under Raiyats. The Court below did not find anything objectionable in the amendment under erroneous impression that some of the plaintiffs are relinquishing their rights, title and interest in the property as Raiyats and now they want to be declared as under Raiyats, little realising that the proposed amendment did not have the consent of the concerned plaintiffs, who are petitioners in this civil revision. I have no doubt in my mind that the case sought to be pleaded by the plaintiffs-opposite party is completely different for the one pleaded earlier and, therefore, if the amendment is allowed, it would change the nature of the suit. No attempt, indeed, was made by the Counsel for the opposite party to support the impugned amendment. So far as the categorisation of the plaintiffs into two categories, namely, plaintiffs 1st set and plaintiffs 2nd set, is concerned, it is obvious that this is merely consequential. If the impugned amendment sought in paragraphs 1 and 2 of the plaint, vide paragraph (c) of the amendment petition is disallowed, the categorisation also goes automatically.

6. In the above premises, the Court below was wrong in allowing the amendment. The impugned order dated 3.7.97 is, accordingly, set aside. Civil Revision No. 1654 of 1997 is allowed.

7. The impugned order having been set aside at the instance of the plaintiffs, Civil Revision No. 1666 of 1997 becomes infructuous. Even otherwise, the defendants cannot complain of any prejudice which the impugned amendment, if allowed, would have caused them. C.R. No. 1666 of 1997 is dismissed accordingly.

8. It will be open to the Court to transpose either plaintiffs Nos. 1 to 11 or plaintiffs 12 to 26 to the category of defendants either suo motu or on application by either of them so that the dispute inter se between them is also decided in the same suit and thereafter consider any application for amendment of the plaint/written statement in accordance with law.