

**Most. Singeshari Devi and anr. Vs. Deena Nath Pandey and ors.**

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**Court :** Patna

**Decided On :** Dec-12-1996

**Judge :** S.N. Jha, J.

**Appeal No. :** Civil Revision No. 1635 of 1996

**Appellant :** Most. Singeshari Devi and anr.

**Respondent :** Deena Nath Pandey and ors.

**Disposition :** Application Allowed

**Prior history :** S.N. Jha, J. 1. This civil revision is by the plaintiffs. They are aggrieved by order dated 21.8.96 by which defendant Nos. 1 to 3 have been allowed leave to amend their written statement. 2. The suit has been filed for partition and injunction. According to the plaintiffs, their husband and father, respectively, Kailash Pandey died in the state of jointness with his agnates, original defendant and his father. By amendment they mentioned the year of his death as 1946. Defendant Nos. 1 to 3 den

**Judgement :**

**S.N. Jha, J.**

1. This civil revision is by the plaintiffs. They are aggrieved by order dated 21.8.96 by which defendant Nos. 1 to 3 have been allowed leave to amend their written

statement.

2. The suit has been filed for partition and injunction. According to the plaintiffs, their husband and father, respectively, Kailash Pandey died in the state of jointness with his agnates, original defendant and his father. By amendment they mentioned the year of his death as 1946. Defendant Nos. 1 to 3 denied the plaintiffs' case. According to them, Kailash Pandey died prior to 1937. The plaintiffs are not his heirs. In the additional written statement which they filed pursuant to amendment of plaint, they mentioned the year of death of Kailash Pandey as 1932.

3. The plaintiffs' evidence commenced on 20.7.95. They closed their evidence on 30.8.95. During this period three amendment petitions seeking amendment of written statement were filed by defendant Nos. 1 to 3 on 24.7, 95, 27.7.95 and 24.8.95, which were not pressed. After close of the plaintiffs' case, on 2.9.95 the defendants filed the impugned petition. By the proposed amendment they want to say, inter alia, that Kailash Pandey had died issue less, he had executed a will ;n favour of defendant No. 1 Deena Nath Pandey and father of defendant Nos. 3 and 4 Jagannath Pandey. This certainly is an innovation in the defendants' case. From intestate succession as pleaded earlier now they want to make out a case of testate succession. The other amendment seeking to substitute 1956 for 1963 as the year of partition and to describe plaintiff No. 2 as niece (sister's daughter) of plaintiff No. 1 and not her own daughter, also amounts to changing the case, which cannot be allowed after the close of the plaintiff's case, . It would not be out of place to mention that the same amendments were sought in the previous petitions (see for example, the petition dated 24.7.95), when the plaintiffs were examining their witnesses, which was not pressed. The impugned amendment, therefore, appears to be mala fide.

4. Counsel for the defendants submitted that the amendment can be refused only if (a) it changes the nature of the suit, or (b) it causes prejudice to the other side. He also submitted that written statements ought to be more liberally amended than plaints. He referred to decision reported in 1990 (1) PLJR 257 in this connection. He further submitted that it is open to the court to permit the parties to add new

grounds. Reliance was placed on A.I.R. 1979 Supreme Court 551. Reference was also made to AIR 1966 Supreme Court 1168 and : [1970]1SCR22 . Counsel also urged that the plaintiffs can be given opportunity to lead rebuttal evidence.

5. The proposed amendments, referred to above, in my opinion tend to bring about material change in the defence case which having regard to the stage of the suit, can not be allowed. As stated above, they filed as many as three petitions seeking virtually the same amendment, which were not pressed. Counsel submitted that it is for the Court to pass order and if the court did not pass any order in the instant case, adverse inference should not be drawn against the defendants. I regret, it is not possible to accept this explanation. The impugned amendments if allowed, are bound to cause prejudice to the plaintiffs. In the above premises, in my opinion, the court below was in error in allowing the same.

6. Before I part with this order, I would Mention that the defendants had sought one more amendment vide item (i) of the proposed amendment regarding the date of death of Kailash Pandey as 1946. That amendment also was allowed by the impugned order. Since that part of the amendment was in consonance with the plaintiffs' case, I do not think they are likely to suffer any prejudice on that count.

7. In the result, this application is allowed. The impugned order dated 21.8.96 except so far as it relates to the first item of amendment is set a side.

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