

Most. Manju Devi Vs. Ramjee Singh @ Bhuttu Singh and ors.

Most. Manju Devi Vs. Ramjee Singh @ Bhuttu Singh and ors.

SooperKanoon Citation : sooperkanoon.com/129490

Court : Patna

Decided On : Jul-20-2005

Judge : R.N. Prasad, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : C.R. No. 1274 of 2004

Appellant : Most. Manju Devi

Respondent : Ramjee Singh @ Bhuttu Singh and ors.

Advocate for Def. : Arun Kumar Tripathi, Adv.

Advocate for Pet/Ap. : Pramod Manbans, Adv.

Disposition : Petition dismissed

Judgement :

R.N. Prasad, J.

1. The petitioner has filed this revision against the order dated 9.7.2004 passed by Subordinate Judge I, Begusarai in Title Suit No. 162/2001 whereby the petition filed by the plaintiff-opposite party for amendment of the plaint has been allowed.

2. The relevant facts of the case are that the plaintiff- opposite party filed the above mentioned suit against the defendant stating inter alia therein that there was

an amicable private oral partition between the parties and accordingly prayed for relief for declaration of title over schedule IV land, recovery of possession, for a direction to the defendants to vacate the suit premises and decree of mesne profit etc. The defendant-petitioner appeared in the suit and filed written statement stating inter alia therein that Deo Narayan Singh being the eldest brother got Jethans in the said private partition. After filing of the written statement, the plaintiff-opposite party filed an application for amendment of the plaint under Order VI Rule 17, CPC stating therein that in the written statement that Deo Narayan Singh got Jethans is absolutely false and baseless. Neither there was any custom of Jethans nor any Jethans was given to him. In partition equal share was allotted to Deo Narayan Singh in view of the wrong and,, false statement in the written statement it has become essential to amend the plaint.

3. The amendment sought for was detailed facts denying the plea in the written statement to the effect that Deo Narayan Singh got Jethans in private partition as there is no proof or paper of partition. The defendants have dispossessed the plaintiffs and hence the plaintiffs seek alternative relief of partition of the properties mentioned in Schedule IV of the plaint and in that case the land purchased by the parties be allotted to them. In Schedule V land eight annas share belonged to Babu Lai out of which Jang Bahadur had 1/3rd share, Jang Bahadur died leaving behind two sons, plaintiff No. 1 Phulena and three daughters i.e. 1/6th and Lai Bahadur had 1/3rd each out of eight annas and out of eight annas Jageshwar Singh had 1/3rd share etc. and also to avoid technical objection of non-joinder of necessary party and in view of seeking alternative relief, the plaintiffs have been advised to implied other legal heirs of Bhuneshwar Singh, Jageshwar Singh, Ram Bahadur Singh and Jang Bahadur Singh whose names have been given in the petition as defendants in the suit. He also prayed for addition of a relief i.e. in the alternative a preliminary decree for partition be awarded and after appointment of survey knowing pleader Commissioner separate patti be carved out and the land sold by the parties be allotted to the said purchasers and final decree be passed and delivery of possession be effected. The Court below after hearing the parties allowed the amendment holding that proposed amendments are essential and would not prejudice the case of the defendants.

4. The submission of the learned counsel for the petitioner is that if the impugned order is allowed to stand, it would change the nature of the suit. On the other hand, learned counsel for the plaintiff-opposite party submitted that since in the written statement question has been raised admitting the private partition in which Deo Narayan Singh being the eldest brother was allowed Jethans i.e. more property than he was entitled to and the plaintiff-opposite party have been dispossessed from the suit land by the defendants which necessitated the amendment of the plaint for complete justice between the parties,

5. On consideration of the submissions made by the counsel for the parties and the materials available on the record this much is obvious that initially the suit was filed by the plaintiff- opposite party for declaration of title, recovery of possession and decree for mesne profit etc. In the written statement though the fact of amicable private partition has been admitted but it has been stated that Deo Narayan Singh being the eldest brother was allowed Jethans in the private partition. In the amendment petition the said aspect has been denied and it has been stated that there was no custom to allow Jethans nor Dev Naraayan Singh was allowed Jethans. Moreover, the defendants have dispossessed the plaintiff-opposite party from the suit property which has necessitated filing of the amendment petition as discussed above, which has been allowed by the order impugned.

6. The contention of the petitioner that amendment proposed would change the nature of the suit has no substance as the petitioner herself has raised such question in the written statement admitting the private partition. The original controversy between the parties by amendment would not change. Moreover, for complete justice between the parties to minimise the litigation and to prevent unnecessary harassment such amendment was necessary. The Court below has considered these aspects of the matter and has allowed the amendment as indicated above. In the case of Pankaja and Anr. v. Yellapa (D) by LRs. and Ors., 2004 BBCJ IV-157, the amendment was rejected on the ground of being sought at the belated stage and also that it introduced a different relief what was originally asked for. The Apex Court, however, on consideration has held, 'the Court has wide power to permit amendment even in a case where there has been substantial

delay in filing such amendment application. The dominant purpose of allowing the amendment is to minimise the litigation , it is always open to the Court to allow application in spite of delay and laches in moving such amendment application. There is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. The grant of amendment really subserves the ultimate cause of justice and to avoid further litigation.' In the case of Prem Bakshi and Ors. v. Dharam Dev and Ors., 2002 (2) PLJR 187 (SC), the Apex Court has held,' 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 that is 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 the Court cannot envisage a situation where amendment of pleading, whatever be the nature of such amendment, would even remotely cause failure of justice and irreparable injury to any party.' In the case of Raj Kumar v. Dipender Kaur Sethi, 2004 AIR SCW 7179, the suit was filed for permanent injunction restraining the defendant from alienating the suit property. Thereafter the amendments allowed to be made in the plaint were to convert it into a suit for specific performance of contract. The Court held that it would not change original controversy between the parties and no injustice would cause to the defendants and the amendment allowed by the trial Court was held to be justified.

7. In the instant case the amendment, as prayed for would not change the original controversy between the parties, rather it is necessary for complete justice and to minimise the litigation between the parties.

8. Thus on consideration as discussed above, I find no error in the order impugned. Accordingly, the revision petition is dismissed.