

Ram Kumar Poddar and ors. Vs. Shiv Narain Sao and ors.

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Court : Patna

Decided On : Jun-29-2005

Judge : S.N. Hussain, J.

Acts : Bihar Tenancy Act, 1885 - Sections 109

Appeal No. : CR No. 548 of 2005

Appellant : Ram Kumar Poddar and ors.

Respondent : Shiv Narain Sao and ors.

Advocate for Def. : Hare Krishna Kumar and Sanjeev Kumar, Advs.

Advocate for Pet/Ap. : Vishwanath Pd. Sinha, Sr. Adv., Rajesh Kumar and Durgesh Kumar Singh, Advs.

Disposition : Revision dismissed

Judgement :

S.N. Hussain, J.

1. Heard learned counsel for the parties.

2. The petitioners are plaintiffs-appellants, who are aggrieved by order dated 18.1.2005 passed in Title Appeal No. 3/1985, by which the learned Additional District Judge-III Naugachhia rejected the petitioners' petition for amendment of the

plaint of Title Suit No. 11/1978.

3. The said title suit was filed by the petitioners challenging the entries in the Record of Rights and for declaration that they were entitled to get entered their names in the Records of Rights in respect of the suit land. The said suit was dismissed by the judgment and decree dated 5.12.1984, whereafter the plaintiffs-petitioners filed Title Appeal No. 3/1985, which is pending before the learned Addl. District Judge-III, Naugachhia.

4. Learned counsel for the petitioners submits that the trial Court gave its finding in favour of the plaintiffs-petitioners holding that since the recent survey entry was not prepared in accordance with the deed of title of the plaintiffs, although such deed of title cannot be over-riden either by the Khatian or by any other entries. Learned counsel for the petitioners further submits that the title suit was dismissed by the learned trial Court only on the ground that 'the tragedy of the suit is that the plaintiffs do not seek any relief for declaration of title and confirmation of possession' and held that the suit was barred under the provisions of Section 109 of the B.T. Act and as such the suit as framed was not maintainable and accordingly the suit was dismissed. He further submits that in the aforesaid circumstances when the appeal was filed, the plaintiffs-appellants filed a petition for amendment of the plaint in paragraphs 11, 14, 12, relief portions and descriptions of the suit land for adding the statements, reliefs and descriptions with regard to declaration of title and confirmation of possession, which, according to him, was necessary for full, final and proper adjudication of the entire matter in dispute.

5. Learned counsel for the petitioners further submits that it is a settled principle of law that pleadings can be amended even at the appellate stage and the main purpose for amendment of the plaint is for avoiding multiplication of the suit and proceedings and if the plaint is allowed to be amended at this stage, the appellate Court will be at liberty either to decide the appeal in accordance with law or to remand it to the trial Court for fresh and proper adjudication, which is the legal necessity in such matter, which has been completely ignored by the trial Court while passing the impugned order, which is completely illegal, arbitrary and

perverse.

6. On the other hand, learned counsel for the opposite parties challenges the contentions raised by the learned counsel for the petitioners and submits that only such amendment can be allowed at the appellate stage which does not change the entire nature of the suit, but here the suit was only for declaration with respect to revisional survey entries and now the plaintiffs-appellants want to make it a suit for declaration of title and confirmation of possession which would require fresh set of evidence as the question of title and possession both are disputed question of facts. Learned counsel for the opposite parties further states that the plaintiffs-appellants do not only want to amend the relief portions of the plaint but also want to add certain facts and want to change the description of the suit land, which cannot be legally allowed at this stage. Hence he submits that the impugned order of the appellate Court is quite proper, justified and there is no requirement for any interference.

7. After hearing the learned counsel for the parties and after perusing the materials on record, it is quite apparent that the suit was filed in the year 1978 and for about six years no such amendment was made and even when the suit was dismissed in the year 1984 and the title appeal was filed in the years 1985, no such petition for amendment was filed for about 19 years and now in the year 2004 the plaintiffs-appellants filed a petition for amendment of the plaint not only with respect to the reliefs claimed but also with respect to the statements of facts as well as descriptions of the lands. In my view the reliefs sought to be added by the plaintiffs-appellants (petitioners) now is completely different from the reliefs already claimed by the plaintiffs earlier in the suit and the suit was decided on the reliefs claimed by the plaintiffs, specially holding that the said relief cannot be granted in absence of any relief sought in the plaint with regard to declaration of title and confirmation of possession. In the said circumstances those amendments cannot be allowed to be added at such a belated stage as an after thought. Furthermore, for deciding the said relief and for considering the amendment sought with regard to statement of facts, fresh materials and evidence would be required and hence in the aforesaid circumstances the learned appellate Court was quite justified in refusing to allow the amendments of the plaint at this stage.

However, the plaintiffs-appellants (petitioners) will be at liberty to file a fresh suit for any such relief.

8. In the aforesaid facts and circumstances of the case, I do not find any merit in this civil revision, which is, accordingly, dismissed.

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