

Gopal Prasad and anr. Vs. Lakshmi Prasad and anr.

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SooperKanoon Citation : sooperkanoon.com/515421

Court : Jharkhand

Decided On : Feb-16-2006

Reported in : AIR2006Jhar52; [2006(2)JCR56(Jhr)]

Judge : R.K. Merathia, J.

Acts : Code of Civil Procedure (CPC) (Amendment) Act, 2002 - Sections 16(2); Code of Civil Procedure (CPC) (Amendment) Act, 1999 - Sections 16; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : WP(C) No. 3695 of 2005

Appellant : Gopal Prasad and anr.

Respondent : Lakshmi Prasad and anr.

Advocate for Def. : Manoj Kumar Sah, Adv. for respondent No. 1 and; Kailash Prasad Deo, Adv. for respondent No. 2

Advocate for Pet/Ap. : P.K. Prasad, Adv.

Judgement :

ORDER

R.K. Merathia, J.

1. Heard the parties.

The petitioners are defendants No. 1 and 2 in the suit. They have prayed for quashing the order dated 23.6.2005 passed by the Subordinate Judge, Hazaribagh in Title Suit No. 76 of 1996 by which the learned Court below rejected the petitioners' application dated 13.2.2004 praying for amendment in the written statement.

2. The learned trial Court after hearing the parties has rejected the prayer for amendment of the written statement by the order impugned on the ground that the amendment sought for is not consistent with the plea taken in the original written statement and the right of the other parties should not get defeated by way of amendment and that the amendment would cause injury to the plaintiff and defendant No. 3.

3. Mr. P.K. Prasad, learned counsel appearing for the petitioners submitted that since the properties were purchased several years ago by their father, therefore, they were not fully aware of the family affairs of Shankar Sao and they came to know through a power-of-attorney that there had been a partition between Annu Sao and Mathura Sao. Accordingly, the said petition for amendment of the written statement was filed which should be allowed in the interest of justice and for proper decision of the case. He relied on the judgments of the Supreme Court in *Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon* : [1970]1SCR22 and *G. Nagamma and Anr. v. Siromanamma and Anr.* : (1996)2SCC25 .

4. Mr. Kailash Prasad Deo, learned counsel appearing for respondent No. 2 (defendant No. 3) and Mr. Manoj Kumar Sah, learned counsel appearing for respondent No. 1 (plaintiff) submitted that the written statement was filed by the petitioners as far back as on 8.7.1997. The evidences of the plaintiff and defendant No. 3 were closed on 6.1.2003 and till 19.12.2003, two witnesses on behalf of the petitioners were examined but the amendment petition was filed on 13.2.2004 i.e. at the verge of conclusion of trial. Mr. Deo relied on the decisions of the Supreme Court in *Modi Spinning & Weaving Mills Co. Ltd. and Anr. v. Ladha Ram and Co.* : [1977]1SCR728 , *Heeralal v. Kalyan Mai and Ors.* : AIR 1998 SC618 . He further submitted that under Order VI Rule 17 of the Code of Civil

Procedure, amendment cannot be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. He lastly submitted that the petitioners did not say anything in their petition about their alleged knowledge through power-of-attorney and that such statement before this Court is also vague.

5. In reply, with reference to Section 16(2)(b) of the Code of Civil Procedure (Amendment) Act, 2002, Mr. Prasad submitted that as the pleadings in this case were filed before commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999, the present proviso to Order VI, Rule 17 of the Code of Civil Procedure may not be applied to reject petitioners' prayer. He further submitted that the amendment sought for will not cause prejudice to the other parties.

6. It is true that trial is at the verge of conclusion and the petitioners' application was a belated one, but in the interest of justice, and for just decision of the case, in my view, the petitioners can be given a chance by allowing the amendment sought for.

7. In the circumstances, the impugned order dated 23.6.2005 raised by the Subordinate Judge, in Title No. 76 of 1996 is set aside and the petitioners' application for amendment of the written statement is allowed. The respondents may file further pleadings and adduce further evidence in rebuttal: The parties are directed to cooperate in early disposal of the case. However, this order will subject to payment of cost of Rs. 5.000/- by the petitioners to each of the respondents, within four weeks from today, failing which, this order shall automatically stand recalled and the writ petition shall stand dismissed.