

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-110 of 2007, Registration No.-1714/14
Baidyanath Sahoo & others vs. Raghunath Sahoo & Others

02-08-2022

Case is called out and record is produced before me. Plaintiff and defendants are in attendance through their learned counsels. On perusal of the case record, it appears that this instant suit fixed for order on petition dated-18.05.2022 filed on behalf of the Plaintiff U/O-VI, Rule-17 of the C.P.C. In this petition, it is submitted that due to clerical mistake some facts are left to be mentioned in the plaint. Due to this some ambiguity and discrepancy have been occurred in the plaint which requires amendment in the plaint. Therefore, learned Court be pleased to allow the amendment petition of the plaintiff and thereupon be pleased to order the plaintiff for incorporating the amendment mentioned in the foot of the petition in the interest of justice.

A rejoinder petition has been filed on behalf of the defendant on 30.05.2022. In this rejoinder petition, it is submitted that the amendment of plaintiff as framed and filed is not maintainable in the eye of law and facts as well. The amendment petition dated-18.05.2022 filed by the plaintiff is bar by the principles waiver, estoppel and acquiescence. The plaintiff has neither any valid cause, nor any legal right to file the instant petition for amendment at this belated stage when the instant case is fixed for argument. The petition dated-18.05.2022 is beyond the provision as laid down under Order-VI, Rule-17 of the C.P.C. The proposed amendment will change the nature of suit and defendants of the suit will highly be prejudiced. It is further submitted that the proposed amendment does not come in the purview of typing mistake, rather the same is deliberate and willful latches in the part of the plaintiff. The proposed amendment is not necessary for the purpose of determining the real question in controversy between the parties. Hence, it is prayed that the learned Court be pleased to reject the amendment petition dated-18.05.2022 filed on behalf of the plaintiff.

Heard both Ld. counsel of plaintiff and defendants and perused the case record. On hearing and perusal of the case record, it appears that an amendment petition has been filed on behalf the plaintiff on 18.05.2022.

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continued.....

In this petition, submission of the plaintiff is that due to clerical mistake some facts are left to be mentioned in the plaint and due to this, some ambiguity and discrepancy have been occurred in the plaint which requires amendment in the plaint. On perusal of the case record, it appears that plaintiff wants to add the name of Shekh Iqbal Hussain before "Shekh Chulhayi" and also to add word "s/o- late" in the 1st line of para-13 of the plaint. It further appears to the Court that sale deed dated-24.01.1956¹ executed by Shekh Iqbal Hussain, s/o-Shekh Chulhai in favour of Jhingur Sah which has been marked Exbt.-1 on behalf of the plaintiff. This is subject matter of the suit and it keeps relevancy in the suit for determination of real question in controversy between the parties. So, it is necessary to add it in the plaint. It appears to the Court that proposed amendment in the plaint as prayed by the plaintiff are simple in nature. Though, proposed amendment has been brought at the belated stage while this suit is pending for defendant's argument, but the same is necessary to remove the vagueness of the plaint and the proposed amendment will not change the nature of the suit or cause of action.

Thus, having considered the fact and circumstances and stage of the record, petition dated-18.05.2022 filed on behalf of the plaintiffs is allowed with cost of Rs.-500 and the petition dated-18.05.2022 is disposed of as accordingly. Plaintiff is directed to amend the plaint accordingly. Further, plea of the defendants that if the amendment is allowed, these defendants will be highly prejudice. Thus, defendants may file additional W.S. if they want within 20 days of such amendment.

Fixing on ...17.8.22..... for amendment in plaint.

Dictated

Sub Judge-II