

Shyamal Kumar Pasari Vs Jamuna Ben

Court: Jharkhand High Court

Date of Decision: Jan. 27, 2025

Acts Referred: Constitution of India, 1950 " Article 227

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Vibhor Mayank, Tarun Kr. Mahato, Shivam Kumar, Rahul Kr. Gupta

Final Decision: Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard learned counsel appearing for the petitioner and learned counsel appearing for the opposite parties.

2. This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 20.09.2022 passed by learned Additional

Civil Judge (Junior Division), West Singhbhum at Chaibasa in Original Suit No.03 of 2020 corresponding to Misc. Civil Application No.06 of 2020

whereby the petition under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 for making necessary amendment in the

plaint has been rejected. Further prayer is made to allow the petition to make out correction in the plaint.

3. Learned counsel appearing for the petitioner submits that the Original Suit No.03 of 2020 was instituted for recovery of possession and declaring

the right title interest which was decided by the judgment/decreed dated 23.03.2010 which was challenged by the defendants in the Title Appeal No.07

of 2010 and the said was decided by the judgment dated 22.03.2017 whereby the judgment/decreed was set aside and the suit was remanded back to

decide afresh by the learned trial court. He submits that a formal prayer was made by way of filing the said petition under Order VI Rule 17 of the

CPC for correction of the area of the land in question, however, the plot number and khata number are similar. He submits that the nature of the suit

will not be changed if the said prayer is allowed, however, the learned Court has rejected the same.

4. Mr. Rahul Kumar Gupta, learned counsel appearing for the opposite parties submits that the suit was already tried and the appeal was preferred

which was remanded back and after remand the said prayer made belatedly and rightly no liberty was allowed by the learned Court. He submits that

there is no illegality in the impugned order and the same may kindly be dismissed.

5. Admittedly, the suit was instituted for declaration of right title interest to handover the possession which was decided by the judgment/decreed dated

23.03.2010 and the same was challenged before the appellate court in Title Appeal No.07 of 2010 and the said was decided by the judgment dated

22.03.2017 whereby the judgment/decreed was set aside and the suit was remanded back to decide afresh by the learned trial court.

6. Petition under Order VI Rule 17 was filed for correction of the area of property in question, however, the plot number and khata number has not

been sought to be changed only the area is sought to be corrected in the plaint. If the nature of suit is not being changed by way of formal amendment

that can be allowed considering that it was only to rectify the absence of material particulars in document.

7. Reference may be made to the case of Life Insurance Corporation of India versus Sanjeev Builders Private Limited and Another reported in

(2022) 16 SCC 1, wherein at paragraph No.62 and 71.8, it has been held as under :-

62. In the case of B.K. Narayana Pillai v. Parameswaran Pillai & Anr., (2000) 1 SCC 712 relying upon the cases of A.K. Gupta (supra) and Ganesh Trading Co.

(supra), this Court held that the court should adopt a liberal approach in the matter of amendment and only when the other side had acquired any legal right due

to lapse of time, the amendment should be declined. It has been held as follows:

“All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed

amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory

allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of

amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment

should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition

for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting

the application for amendment of plaint or written statement.”

71.8 Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

8. In view of the above and further coming to the said amendment sought by the petitioner it transpires that only a formal amendment was needed and

to avoid the multiplicity of the litigation, the learned Court was required to allow the said amendment, however, the said was rejected.

9. In view of the above, the order dated 20.09.2022 passed by learned Additional Civil Judge (Junior Division), West Singhbhum at Chaibasa in

Original Suit No.03 of 2020 corresponding to Misc. Civil Application No.06 of 2020 is hereby set aside and the petition filed under Order VI Rule 17

of the CPC by the petitioner is allowed.

10. The learned Court will allow the petitioner to amend the plaint in the light of the said petition, however, the rebuttal right of the defendants will be

there and they will be allowed to rebut the same.

11. This petition is allowed in above terms and disposed of.