

Ram Kumar Sao @ Sahu Vs Bandhu Sao son of Late Khilodhar Sao

Court: Jharkhand High Court

Date of Decision: Feb. 11, 2025

Acts Referred: Constitution of India, 1950 " Section 227
Code of Civil Procedure, 1908 " Section 151, Order 6 Rule 17

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Arun Kumar, Vijay Kr. Sharma

Final Decision: Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard learned counsel appearing for the petitioners and learned counsel appearing for the sole opposite party.

2. This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 12.10.2023 passed by learned Munsif,

Chatra, in O.S. No.176 of 2018 whereby the petition filed under Order VI Rule 17 read with Section 151 of CPC for amendment in written statement

has been dismissed by the learned Court.

3. Mr. Arun Kumar, learned counsel appearing for the petitioners submits that the plaintiff instituted O.S. No.176 of 2018 for declaration and

confirmation of possession over the suit land and for restraining the defendants from interfering with the possession of the plaintiff and if the plaintiff is

found dispossessed from any portion of the suit land during the pendency of the suit, Khas possession be given to the plaintiff, after evicting

defendants therefrom. The prayer in the suit is also made that the sale deed No.4650 dated 07.09.2015, sale deed No.3442 dated 14.10.2016 and sale

deed No.2226 dated 25.06.1969 are void, illegal, in operative and void ab initio as well as same is not binding upon the plaintiff with regard to Khata

No.26, under Khewat No.2/2, total plot No.25, total area 6.43 acres, Khata No.88, under Khewat No.2/4, total plots 18, total area 4.41 acres,

Khata No.19 under Khewat No.2/1, total plots 4, and total measuring area 4.65 acres of village Jabara, PS Simaria, PS No.105, Pragana

Goriya.

4. He submits that Jitan Sah @ Sundi was the common ancestor of plaintiff and defendants and Jitan Sao remained in peaceful possession over the

suit land till his lifetime and subsequently jamabandi was opened. He further submits that on summon the defendants/petitioners appeared in the suit

and filed their written statement wherein at paragraph No.25 of the second line of the written statement word 'not' was missing and in same para

and same line the word 'not' mentioned before the word denied and for that the petition was filed under Order VI Rule 17 of the CPC for

amendment which has been rejected by the learned Court. He submits that the learned Court has given the wrong finding that the nature of the suit

property will be changed. He further submits that on the basis of the compromise the said suit was sought to be declared and the compromise is being

disputed by the petitioners. He relied in the judgment of Hon'ble the Supreme Court in the case of Nitaben Dinesh Patel versus Dinesh

Dahyabhai Patel reported in (2021) 20 SCC 210. On this ground, he submits that the impugned order may kindly be set aside.

5. Per contra, learned counsel appearing for the sole opposite party submits that Khata No.26 under Khewat No.2/2, total area 6.43 acres of village

'Serendag, PS 'Simaria, District 'Chatra recorded in C.S. operation as record of right in the name of Jitan Sah s/o Kinu Sah in remark

column as mentioned ex-landlord manager court of wards minzanib Raghunandan Prasad Bhagat, the detail of Khata No.26, 88 and 19 described in

schedule C of the plaint. He submits that the panchayati was held between Bandhu Sao, Munni Sao, Ramsewak Sao and Others with regard to

partition among them with regard to suit land on 01.06.2016 and several villagers put their signature likewise before the panches on the same, but the

terms and conditions had not been complied between the parties vide the said panchnama. He submits that since the terms and conditions of the

compromise was not followed by the parties that is why the suit has been instituted. He submits that if the word 'not' twice in paragraph No.25

will be allowed then the entire nature of the suit will be changed and that is a clear admission in favour of the plaintiff.

6. It is an admitted position that on the basis of compromise the said suit has been instituted and the compromise petition has been brought on record

by way of filing the counter affidavit on behalf of the sole respondent and the petitioners wherein have also signed the said petition and in light of that

paragraph No.25 of the written statement, it has been stated as under :-

25. That the statement made in para 11 of the plaint is also true and correct and hereby not denied and it is also mentioned in their para with regard to suit land

vide dated 01.06.2016 and several villagers put their signature likewise purchasers on the same is also not true and correct but it is totally wrong to say that the

defendants have disobeyed the decision of Panches between the parties vide Panchnama dated 10.06.2018.

It is submitted that each co-sharers are still in possession over their suit land according to their share and suit land is not joint and there is no unity of title and

unity of possession in between the parties and there is also no provision or repartition.

7. In the second line of the said para the averments of para 11 is said to be not denied and in the 5th line by way of the said amendment it is sought to

be denied by way of putting the word "not" and if both the words have been allowed to be deleted and inserted the right accrued in favour of the

petitioners will be taken back as their admission is there in favour of the plaintiff.

8. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraph 25 is not making inconsistent and alternative

pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such

amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants.

Moreover, there is no explanation given as to why the petitioners have come forward with this plea at the belated stage.

9. The proviso of Order 6 Rule 17 of CPC provides that no application for amendment shall 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 the trial. In the

present case, this is not even the pleaded case of the petitioners before the learned trial court in the application for amendment that due diligence was

there at the time of filing of the suit in not seeking relief prayed for by way of amendment that cannot be accepted as the ground to allow any

amendment in the pleadings at the belated stage.

10. So far the judgment relied by learned counsel appearing for the petitioners in the case of Nitaben Dinesh Patel versus Dinesh Dahyabhai Patel

(supra) is concerned in that case it was not a position that something has been admitted in favour of the plaintiff in the written statement. In the case

in hand in paragraph No.25 right has already accrued in favour of the plaintiff in view of that if the amendment is allowed that will be taken back

which is against the mandate of law and in view of that the judgment relied by learned counsel appearing for the petitioners is not helping the

petitioners.

11. There is no illegality in the order of the learned Court, as such this petition is dismissed.