

(2010) 09 JH CK 0023
Jharkhand High Court
Case No: None

Khasjamda Mining Company and
Monnet Ispat and Energy Ltd.

APPELLANT

Vs

Singhbhum Mineral Company
and Shri Ram Mineral Company

RESPONDENT

Date of Decision: Sept. 3, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17, 144

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Judgement

R.K. Merathia, J.

This writ petition has been filed against the order dated 23.4.2010, passed by learned Sub Judge-1, Chaibasa, in Title Suit No 12 of 2008, dismissing the application filed on behalf of plaintiffspetitioners under Order 6, Rule 17 of the CPC (C.P.C.) for amendment of plaint.

2. The relevant facts in short are as follows. The petitioners filed the said suit for perpetual injunction on 25.11.2008 along with a petition under Order 39, Rules 1 and 2 for temporary injunction. Defendant No. 2 filed written statement along with rejoinder to the injunction petition on 30.4.2009. The prayer for injunction was refused by the learned trial court on 14.5.2009. According to the petitioners, before they could prefer appeal against the said order refusing to grant injunction, petitioners were dispossessed in the last week of June, 2009. However, the appeal was filed in this Court on 21.7.2009 being M.A. No. 187 of 2009 along with a petition u/s 144 C.P.C. for restoration of possession. The issues were framed on 5.9.2009, by the trial court. The said appeal was dismissed on 27.11.2009, against which, petitioners filed SLP in Supreme Court on 9.3.2010. According to the petitioners, as the appeal was dismissed and no order of restoration was passed, the amendment

petition in question was filed by the petitioners on 20.3.2010, which was dismissed on 23.4.2010, against which, this writ petition has been filed. Petitioners moved Supreme Court vide Civil Appeal No. (s) 4424-4425 of 2010 against the said order dated 27.11.2009, which was dismissed on 11.5.2010.

3. Mr. Vikash Agrawal, learned Counsel appearing for the petitioners, submitted that as the petitioners were dispossessed after rejection of prayer for injunction, it became necessary to amend the plaint seeking decree of possession; restoration of possession; decree for rendition of accounts and decree for declaration that the terms and conditions of the agreement dated 25.9.2002 are binding on respondent No. 2. He further submitted that in the orders passed in injunction matter, petitioners were found in possession and it was also found that they were doing the mining work. But they have been dispossessed taking advantage of the refusal of the prayer for injunction. He also submitted that petitioners did not file petition for amendment of plaint immediately when they were dispossessed in the last week of June, 2009, as they were advised to prefer appeal against the order refusing injunction, which could be filed only on 21.7.2009. Then after the appeal was dismissed by this Court and no order was passed on the prayer for restoration, the amendment petition in question was filed in view of the subsequent events, which took place during pendency of the suit. He also submitted that in the plaint and the injunction petition, threat of dispossession was already pleaded. He, therefore, prayed that in the interest of justice and to avoid multiplicity of proceedings, the prayer for amendment of plaint may be allowed. He relied on the judgments reported in [Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.,](#) ; [Rajesh D. Darbar and Others Vs. Narasingrao Krishnaji Kulkarni and Others,](#) ; [Om Prakash Gupta Vs. Ranbir B. Goyal,](#) and [Sampath Kumar Vs. Ayyakannu and Another,](#)

4. Supporting the impugned order, Mr. Chada, learned senior counsel appearing for the respondents, submitted that the trial commenced on 5.9.2009 when the issues were framed and the amendment was sought thereafter. He further submitted that the amendment sought will fundamentally change the nature and character of the suit and will introduce a new cause of action defeating the limitation as prescribed under the law. He lastly submitted that at best petitioners can file a fresh suit if the cause of action is not barred by limitation. He relied on the judgments reported in [Vidyabai and Others Vs. Padmalatha and Another,](#) and [Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others,](#) .

5. It appears from the impugned order that the learned trial court inter alia held that though the amendment could be allowed even after commencement of trial, if inspite of due diligence petitioners could not have raised the matter before the commencement of trial; and that in the present case, issues were framed on 5.9.2009, whereas the application for amendment was filed on 20.3.2010. It further held that the plaintiffs filed this suit for permanent injunction claiming that they

were in possession of the suit property and were doing mining work on the basis of the agreement dated 25.9.2002 but did not seek declaration that the said agreement was binding on the parties and therefore by amendment they cannot seek such declaration as it is not a subsequent event. It was simply observed that the proposed amendment will change the nature of the suit.

6. It appears that the suit was filed for perpetual injunction along with a petition for temporary injunction apprehending dispossession. The prayer for injunction was refused by the trial court, and before filing appeal in this Court, petitioners were dispossessed. Along with the appeal, petitioners also filed a petition u/s 144 C.P.C. for restoration of possession. Issues were framed during pendency of the appeal in this Court. The appeal was dismissed and no order was passed on the petition of restoration. Petitioners moved Supreme Court, and also filed the petition for amendment in question, seeking possession, rendition of accounts and declaration that the agreement dated 25.9.2002 is binding on defendant No. 2. One of the proposed amendment regarding rendition of the accounts is in tune with the following direction/observation of the Supreme Court, made subsequent to filing of the amendment petition.

We only direct the trial court to dispose of the suit as expeditiously as possible preferably within six months from completion of pleading by the parties. In the meantime, the respondents shall keep monthly accounts of the mining transaction conducted by them and copy of the same be submitted to the appellants every month.

The appeals are dismissed with the above observation.

7. The amendment is sought in view of petitioners' dispossession during the pendency of the suit.

It has been inter alia observed by the Supreme Court that "The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment" {Para 11 of Sampat Kumar (supra)}.

The facts and circumstances in The case of Vidyabai (supra) relied on behalf of the respondents, were different from the present case as in that case, entirely a new case was sought to be made out, which is not the position in this case.

In the case of Revajeetu (supra) relied by the respondents, by the proposed amendment, the plaintiff was trying to introduce a new case and the admissions made were sought to be withdrawn to the prejudice of other side.

8. It is true that the amendment petition was filed after framing of the issues but in the facts and circumstances of this case, and in view of the Judgments relied by the parties, in my opinion, for proper adjudication of the disputes involved and in order to avoid multiplicity of proceedings and in the interest of justice, the amendment sought for should be allowed. The suit is at the initial stage. No prejudice will be

caused to the respondents.

In the circumstances, the impugned order is set aside. The prayer for amendment is allowed. Respondents may file their additional written statement(s) if any, raising all the pleas of facts and law available to them, within two weeks. However, this order is subject to deposit of cost of Rs. 10,000/- (Ten thousand only) in the court below within two weeks, which the respondents will be entitled to withdraw.

With these observations and directions, this writ petition is disposed of.