

**(2011) 03 JH CK 0048**

**Jharkhand High Court**

**Case No:** Writ Petition (C) No. 883 of 2011

Satlal Mahto

APPELLANT

Vs

Rudlal Mahto and Others

RESPONDENT

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**Date of Decision:** March 28, 2011

**Hon'ble Judges:** Dhirubhai Naranbhai Patel, J

**Bench:** Single Bench

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### **Judgement**

D.N. Patel, J.

Learned Counsel appearing for the Petitioner submitted that an application for amendment in the plaint was preferred by the Petitioner, who is the original Plaintiff and partly the said application was allowed and partly it was rejected. Paragraphs vi to x of the amendment application was not allowed to be amended and, therefore, the present petition has been preferred. Paragraphs vi to x of the amendment application are as under:

(vi) After paragraph 15, a sub para "15A" be added as follows:

15A

That so far as the lands of Khata No. 48 are concern, the father of the Defendant has received Compensation amount also awarded in L.R. Case No. 26/83 for acquisition of the land (for Bazar-Samittee) measuring 1.93 Acres (Khata No. 48) consisting of plot No. 2143, Area 1.75 Acres and plot No. 2145 Acres 0.18 Acre. Hence the lands measuring 1.93 acres should be deducted from the share of the Defendants.

In addition to the above lands, the lands measuring 0.50 acre under Khata No. 48 has been sold by Defendants and their persons. Hence this much area should also be deducted from their share.

Thus the suit lands under Khata No. 48 area 19.25 Acres after deducting the area 2.43 Acres (Acquired area 1.93 acres plus sold area 0.50 acres) has been mentioned under Schedule-C/1. The purchasers of the lands of Khata No. 303 and 48, before

the date of institution of the suit have not been impleaded as Defendants because their acquired/purchased lands have not been included in the suit lands under Schedule C and C/1.

vii) In the Schedule A of the plaint under Khata No. 303, the area 0.46 acre of the plot No. 1071 be corrected as 0.40 Acre.

After plot No. 2115 and before the plot No. 2117, plot No. 2116 measuring 0.41 acres" be inserted.

Under the heading sold lands, with regard to plot No. 1072 out of area 0.31 Acre, the sold land "06. 2/5" be corrected as "0.06 1/5".

With regard to plot No. 1073 out of 0.91 Acre, the lands sold "0.07 1/2" be added.

With regard to plot No. 1074 out of 0.34 Acre, the sold land "0.10" Acre be corrected as "0.07".

With regard to plot No. 1075 out of 0.61 Acre, the sold land 0.03 Acre be added.

viii) Under Khata No. 48 under Schedule A, on the heading after area on parallel line "area sold" or "acquired" be mentioned and under this heading, with regard to plot No. 2143 after the area 1.75 Acres the words "Acquired for Bazar Samittee" and with regard to plot No. 2145 after area 0.18 Acre" acquired for Bazar Samittee be mentioned.

With regard to plot No. 2233 out of area 0.58 Acre under the heading of sold area 0.08 1/2 Acre be mentioned.

With regard to plot No. 2360 out of area 0.33 Acre, "0.11 1/2 Acre be mentioned.

With regard to plot No. 1371 out of area 0.16 Acre "0.07 1/2" Acre be mentioned  
After that plot No. 1370 Area 0.87 Acre be added and out of that area sold land 0.22 1/2 Acre be mentioned.

ix. Under Khata No. 48 plot No. 2094 area 0.29 Acre be corrected as 0.19 and plot No. 2660, Area 0.87 Acre be corrected as 0.08 Acre.

The total area under Khata No. 48 under Schedule "A" 20.98 Acres be corrected as 21.68 Acres.

x. In schedule "C" plot No. 1071 area 0.46 Acre be corrected as 0.40 Acre.

With regard to plot No. 1072, area 0.24 3/5 Acre be corrected as 0.24 4/5 Acre.

With regard to plot No. 1073, area 0.91 Acre be corrected as 0.83 1/2 Acre.

With regard to plot No. 1074 area 0.24 Acre be corrected as 0.27 Acre and in plot No. 1075, Area 0.61 Acre be corrected as 0.58 Acre.

After plot No. 1076, Area 0.66 Acre, a plot No. 1077 Area 0.43 Acre be added before the Plot No. 1079.

The total area under Khata No. 303 under Schedule C, 9.52 3/5 Acre be corrected as 9.29 3/10 Acres.

Under Schedule C/1 with regard to Khata No. 48, the plot No. 2143, Area 1.75 Acres and plot No. 2145 Area 0.18 Acre be deleted.

With regard to plot No. 2233 Area 0.58 Acre be corrected as 0.49 1/2 Acre and in plot No. 2360, Area 0.33 Acre be corrected as 0.21 1/2 Acre.

With regard to plot No. 1370, Area 0.87 Acre be corrected as 0.64 1/2 Acre and regarding plot No. 1371 an area 0.16 Acre be corrected as 0.08 1/4 Acre. The total area of Khata No. 48 under Schedule C/2 20.79 Acres be corrected as 19.25 Acres be corrected.

2. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, it appears that the amendment, sought for, in the plaint by the original Plaintiff in Partition Suit No. 48 of 2009, affects the very root of the case. Properties referred in amendment are the suit properties. Moreover, by amending the plaint, no prejudice is going to cause to the original Defendants. Looking to the nature of amendment, it will facilitate the trial court to arrive at correct decision of the dispute between the parties.

3. Learned Counsel appearing for the Respondents (original Defendants) has fairly submitted that there is some vagueness in the amendment application, but, nonetheless if it is allowed to be amended, they have no objection because the burden of proof lies upon the original Plaintiff and, therefore, the cloud of vagueness will have to be dispelled or cleared by adducing proper evidence before the trial court.

4. In view of the aforesaid facts, the amendment application is allowed to the extent to which it was rejected by the trial court and, hence, the order passed by the Sub Judge-VI, Hazaribagh dated 15th January, 2011 in Partition Suit No. 48 of 2009 is partly quashed to the extent to which the amendment application preferred by the original Plaintiff is rejected. Amendment, in the original plaint, shall be carried out as early as possible by the original Plaintiff. The Partition Suit No. 48 of 2009 will be disposed of as early as possible and practicable.

5. It is needless to say that the original Defendants are permitted to file written statement after the amendment is carried out.

6. The writ petition is, accordingly, disposed of.