

*Versus*

1. Nunlal Mahto
2. Nandlal Mahto
3. Biswanath Mahto,

All sons of late Hukum Mahato, resident of village Birajpur,  
PO-Malahara, PS-Mohanpur, District-Deoghar

... .. Respondents

**CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR**

For the Petitioners : Mr. Indrajit Sinha, Advocate  
Mr. Amitabh Prasad, Advocate  
Mr. Suraj Singh, Advocate  
For the Respondents : Mr. Rohit Agarwal, Advocate  
Mr. Arvind Kumar Choudhary, Advocate

06/30.11.2017 Aggrieved of order dated 14.10.2015 by which application dated 29.08.2014 seeking amendment in the schedule of land appended to the plaint has been rejected, substituted legal heirs of plaintiff no. 1 and plaintiff no. 2 have approached this Court.

2. Title Suit No. 57 of 2010 was instituted by Shambhu Manjhi and others. In the suit Nunlal Mahto, Nandlal Mahto and Biswanath Mahto were defendants. During the pendency of the suit plaintiff no. 1 died and in his place his legal heirs were substituted by order dated 05.04.2014. The suit was instituted for a declaration of plaintiffs' right, title and interest over the suit property and a declaration that order dated 17.06.1976 passed in Revenue Misc. Case No. 109 of 1973-74 is void ab-initio, collusive and not binding on the plaintiffs. The plaintiffs have pleaded that father of plaintiff nos. 1 and 2 and grandfather of

plaintiff nos. 3 and 4 namely, Bhuneshwar Manjhi acquired one acre land within plot no. 30 in Settlement Case no. 106 of 1958-59 through order dated 18.04.1964 passed by the Sub-Divisional Officer, Deoghar and he came in possession over the suit land. The defendants contested the suit disputing right, title and interest of the plaintiffs over the suit schedule land. Specific case pleaded by the defendants is that northern boundary in the schedule of the plaint is wrong and, in fact, in northern side the plaintiffs do not possess any land rather the northern side of the suit schedule property is recorded as the road of the village. Similarly, the defendants have disputed the description of boundary on southern side and eastern side also. In the pending suit an application dated 29.08.2014 was filed for amendment in the schedule of land disclosed in the plaint. This application has been dismissed by the trial judge on the ground that if the boundary in the schedule of land is changed, the suit property itself would be shifted from one place to another place which eventually would change the nature of the suit.

3. Contending that correction of a mistake on account of typographical error or inadvertence, in particular, in corroboration of the pleadings in the plaint would not change the nature of the suit, nor any prejudice would be caused to the other party, the learned counsel for the petitioners has referred to the judgment in *“Usha Devi vs. Rijwan Ahamd and Ors.”*, reported in (2008) 3 SCC 717 to fortify his contention. Per-contra, the learned counsel for the respondents referring to paragraph no. 6 of the written statement contends that the dispute amongst the parties, in essence, is in respect of boundary of the suit schedule property. The learned counsel has referred to evidence of Nandlal Mahto who was examined as the defendants' witness (paragraph no. 20) to contend that on the southern side of the suit schedule land the petitioners have acquired a part in plot no. 30 and with a view to grab the respondents' land, the

plaintiffs-petitioners now intend to incorporate plot no. 30 as southern boundary of the suit schedule property, which cannot be permitted at the belated stage.

4. In “Usha Devi” case on somewhat identical facts amendment in the schedule of land was allowed. In the present case, the defendants have specifically disputed the description of boundary disclosed in the plaint which the plaintiffs through amendment intend to correct. The correction in boundary of the suit schedule property is, in fact, not contrary to pleadings in the plaint. Moreover, while adjudicating an application for amendment, the Court is not required to advert to the merits of the matter rather the test is, whether the proposed amendment would cause prejudice to the other party and, whether it is necessary for adjudicating the real issue in controversy. The description of the suit schedule land and its extant are not changed by the proposed amendment. It is, in fact, necessary for identification of the suit schedule property.

5. In “Sajjan Kumar vs. Ram Kishan”, reported in (2005) 13 SCC 89, the Hon'ble Supreme Court has held thus:

5. “..... It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit”.

6. In the aforesaid background of the law on amendment in the pleadings, when the impugned order dated

14.10.2015 is tested, it is found patently unsustainable and accordingly, it is set-aside. The writ petition stands allowed. The amended schedule shall be incorporated in the plaint to which the defendants shall be permitted to file additional written statement and, thereafter the arguments in Title Suit No. 57 of 2010 must commence immediately.

7. Let a copy of the order be transmitted to the trial Court through 'Fax'.

**(Shree Chandrashekhar, J.)**

*Tanuj/-*