

IN THE HIGH COURT OF JHARKHAND, RANCHI
W.P.(C) No. 3492 of 2017

Keria Mahatain @ Sushila Mahatain, daughter of Late Koka Mahato and wife of Sri Prem Bahadur, resident of MADA Colony, Hirapur, P.O.-Dhanbad, P.S.-Hirapur, District-Dhanbad

..... Petitioner

--Versus--

- 1.Maheshwar Mahato
- 2.Kisto Mahato
- 3.Tara Chand Mahato
- 4.Chanda Mahato
- 5.Indra Narayan Mahato
- 6.Binod Mahato

All sons of late Gobardhan Mahato.

- 7.Kanhai Mahato, son of late Duryodhan Mahato
- 8.Ramlal Mahato, son of Kanhai Mahato
- 9.Raju Mahato, son of Kisto Mahato

All residents of Village-Bhelatand, P.O.-Nagnagar, P.S.-Barwadda, District-Dhanbad

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner : Mr. Ajay Kumar Sah, Advocate

For the Respondents : Mr. R.S. Mazumdar, Sr. Advocate

5/ **31.10.2017** Aggrieved of order dated 03.06.2017 passed in Title Suit No.267 of 2014 whereby an application under Order VI Rule 17 CPC for amendment in the schedule 'A' land has been rejected, the petitioner has approached this Court.

2. Title Suit No.267 of 2014 was instituted for declaration of plaintiff 's title and her possession over the suit property and for a declaration that the sale deed dated 08.05.1968 is illegal, void and collusive and thus, not binding upon the plaintiff. A prayer for grant of permanent injunction was also made by the plaintiff. The plaintiff has pleaded that the properties situated at Mauza-Behlatand, mouza no.89, P.S.-Barwadda (Old Govindpur) under Khata no.63 was recorded in the name of Bandhu Mahato and Banomali Mahato. Prior to

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preparation of CS Record of Rights, it is pleaded that, by an amicable settlement the parties' shares were determined and they came in possession of their respective shares. Koka Mahato died sometime in the year 1967 and after his death his wife namely, Smt. Kalawati Devi left the house and she contracted a second marriage with Hari Mahato and thus, she had no concern with the plaintiff in any manner whatsoever. The plaintiff has claimed rightful ownership and possession over schedule 'A' properties by pleading that she had been growing paddy over the said property.

3. The defendants appeared in the suit and resisted the claim of the plaintiff. Before the plaintiff's witnesses were examined, an application dated 07.07.2015 for amendment in the schedule of land for correcting area of land and the plot numbers, 28 in number, was filed. This application was allowed vide order dated 17.12.2015. Thereafter, the plaintiff after examining five witnesses, filed another application under Order VI Rule 17 CPC for correction in description of Item no.1 in Schedule 'A' properties and for deleting the plots given under Item no.2. The proposed amendment in the application dated 20.03.2017 reads as under :

“It is therefore prayed that your honour would be graciously pleased to pass order for amendment of the plaint by inserting the Item No.I in the Schedule of the plaint and deleting the plots as given item no.II on the facts and circumstances as prayed for as other your petitioner would cause serious prejudice prayer.
And for this your petitioner shall ever pray.

That the proposed amendment Item No.I
Mouza-Bhelatand, Mouza No.89, Khata No.63, Plot
No.1063, Area 27 dec. out of 28 dec. Plot No.2241,
Area 12 dec. out of 25 dec.

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Khata No.81

Plot No.881, Area 18 dec. out of 37 dec.

Plot No.889, Area 11 dec. out of 21 dec.

Plot No. 862, Area 14 dec only

Plot No. 863, Area 12 dec.

Plot No. 893, Area 20 dec.

Plot No.892, Area 06 dec. out of 12 decimals

Item No.II

Khata No.63 Mouza-Bhelatand (89)

Plot Nos.1057, 1022, 1730, 1501, 1503, 1504, 1508,
2027, 2029, 2933 and 1733.”

4. The learned counsel for the petitioner contends that once a similar amendment was allowed vide order dated 17.12.2015, the proposed amendment for correcting the description of land contained in Schedule 'A' could not have been declined. It is contended that change in schedule of land would not change the nature of the suit and the suit shall remain one for declaration of plaintiff 's title and confirmation of her possession over the suit schedule land.

5. Proviso to Order VI Rule 17 CPC mandates that no amendment shall be allowed, except where the Court finds that the amendment is necessary for an effective adjudication of the dispute in the suit and it shall not cause such prejudice to the other party for which it cannot be compensated. By now, it is well-settled that amendment in the pleadings can be allowed at any stage, however, the Court must record a finding that the proposed amendment would not cause prejudice to the other party. The party seeking amendment also must plead and establish that the amendment sought in the pleadings was not

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within his knowledge or inspite of due diligence such facts could not be inserted in the pleadings. The fact, that the plaintiff had moved an application for amendment on 07.07.2015 for correcting the area of suit schedule properties and description of the plot numbers, is a sufficient indication that the plaintiff had knowledge of the facts which now she intends to incorporate through amendment in the plaint. Moreover, the plaintiff has failed to offer a plausible explanation for avoiding the rigors of proviso under Order VI Rule 17 CPC. Suffice would be to record that proviso to Order VI Rule 17 CPC is mandatory. After examining five witnesses who have deposed in the Court in respect of the schedule of land as stood after the application for amendment was allowed on 17.12.2015, if the proposed amendments as contained in application dated 20.03.2017 are allowed, now plaintiff 's witnesses would depose facts contrary to what they have already deposed in the Court. The amendments sought are not by way of explanation or elaboration rather, description of plot numbers given in the proposed amendment is contrary to the description of land comprised in sale deed dated 08.05.1968.

6. In the above facts, finding no merit in the writ-petition, it is dismissed.

(Shree Chandrashekhar, J.)