

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 5766 of 2017

Kanchan Devi wife of Sri Rama Raut, resident of Village-Gamtariya,
Tola-Budhiyadhako, P.O.-Bandiabad, P.S.-Jainagar, Dist.-Giridih

.... Petitioner

Versus

1. Kailash Mahto
2. Ranjeet Mahto
3. Manoj Mahto
4. Kokil Mahto, all are the sons of late Shyam Mahto, and all
resident of Village- Gamtariya, Tola-Budhiadhako, P.O.-
Bandiabad, Dist.-Giridih
5. Ashok Yadav
6. Mollu Yadav, both are sons of late Khago Mahto, both are the
resident of Village- Gamtaria, P.O.+ P.S.-Bengabad, Dist.-Giridih

.... Respondents

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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| For the Petitioners | : Mr. Ram Lakhan Yadav, Advocate |
| For the Respondents | : Mr. Vikas Kishore, Advocate |

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By the Court:-

1. Heard the parties.
2. This Writ Petition has been filed under Article 227 of the
Constitution of India with a prayer to issue of appropriate writ(s),
order(s), direction(s) in the nature of certiorari to set aside the
order dated 19.07.2017 passed by the learned Principal District
Judge, Giridih in Probate Case No. 11 of 2010 and to direct the

learned Principal District Judge, Giridih to allow the prayer of proposed amendment sought by the writ petitioner who was the petitioner of probate case no. 11 of 2010 in the court of learned Principal District Judge, Giridih for determining controversy between the parties.

3. The brief fact of the case is that the writ petitioner filed Probate Case No. 11 of 2010 for grant of probate in her favour in respect of the property mentioned in schedule of the probate application. The probate application was ultimately converted in title suit and respondent nos. 5 and 6 were added as defendant nos.5 and 6 of the title suit; who filed a written statement wherein they contended that the petitioner suppressed the facts in his probate application and made baseless allegations therein. In view of the contention of the respondent nos. 5 and 6; the petitioner filed the petition for amendment of the plaint of the title suit relating to probate by incorporating the fact that after death of Bundo Mahto his brother Khago Mahto got an illegal sale deed prepared in the name of Bundo Mahto by impersonation of Bundo Mahto by someone else. For the offence committed by Khato Mahto, a criminal case being G.R. Case No. 990 of 1983 corresponding to Giridih (T) P.S. Case No. 156 of 1983 was instituted and seeing the chances of conviction, Khato Mahto relinquished his interest in the illegal sale deed and thereafter Kavilash Masomat sold the land to different persons and there was no protest or objection by Khago Mahto or his heirs and also sought to insert a verification

of the witness Rameshwar Yadav to the probate application that Rameshwar Yadav was one of the witness in the will executed by Kavilash Masomat.

4. The learned Principal District Judge, Giridih rejected the first part of the proposed amendment by terming the same nothing but filling up the lacunae by adding name after filing of the written statement of the defendant which would change the nature of the case but allowed the second part of the proposed amendment.
5. It is submitted by the learned counsel for the petitioner that the learned Principal District Judge, Giridih has committed gross illegality by observing that the proposed amendment at serial no. (i) was for filling up the lacunae which would change the nature of the case. It is next submitted by the learned counsel for the petitioner that the proposed amendment at serial no.(i) was for the purpose to show the conspiracy hatched by Khago Mahto in getting the forged sale deed executed in the name of Bundo Mahto after his death. It is then submitted by the learned counsel for the petitioner that the learned Principal District Judge, Giridih failed to understand the spirit and import of Order VI Rule 17 of Code of Civil Procedure and illegally rejected the prayer for incorporating the proposed amendment at serial no.(i) as well by a non-speaking order; which is not sustainable in law and the prayer as made in this writ petition be allowed.
6. Learned counsel for the respondent nos.5 and 6 on the other hand opposes the prayer made by the writ petitioner and submits

that the proposed amendment at serial no.(i) is designed to fill up the lacunae and to change the nature and character of the proceeding. Hence, it is submitted that the learned trial court having rightly rejected the same, this writ petition being without any merit be dismissed.

7. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that it is a settled principle of law that power to amendment is granted to the court in the larger interest of doing full justice to the parties; as has been held by the Hon'ble Supreme Court of India in the case of **M/s. Ganesh Trading Co. vs. Moji Ram** reported in **AIR 1978 SC 484**.
8. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **K. Venkateswara Rao & Anr. vs. Bekkam Narasimha Reddy & Ors.** reported in **AIR 1969 SC 872** that under Order VI Rule 17 of Code of Civil Procedure a court of law trying the suit has very wide powers in the matter of allowing the amendments or pleadings and all the amendments which will aid the court in disposing of the matter in dispute between the parties are as a rule be allowed subject to law of limitation.
9. Now coming to the facts of the case, the writ petitioner by way of proposed amendment at serial no.(i) intent to introduce certain facts which has got no bearing in the ultimate prayer of the probate application, which has been filed for grant of probate in

respect of the property mentioned in schedule of the probate application. The purpose of the amendment sought by the petitioner is because of the averment made in the written statement by the respondent nos.5 and 6; who were not the original parties to the probate application but subsequently, they have been impleaded upon their prayer made for intervention was allowed. The nature of the proceeding that is “for grant of probate” remains the same even after amendment is allowed. The amendment does not seek any additional relief or does not intend to change any cause of action in respect of the suit. Hence, this Court has no hesitation in holding that learned Principal District Judge, Giridih has committed a grave illegality by observing that the proposed amendment at serial no.i will change the nature of the case.

10. It is also a settled principle of law that parties in a civil proceeding have to plead the facts as suits them and it appears that no witnesses have been examined in the probate case by 19.07.2017 when the order was passed.
11. In the case of **Surender Kumar Sharma vs. Makhan Singh** reported in **(2009) 10 SCC 626**, the Hon’ble Supreme Court of India has the occasion to consider whether the prayer for amendment of plaint allowed will affect the nature and character of suit.
12. So in the considered opinion of this Court the impugned order dated 19.07.2017 passed by the learned Principal District Judge,

Giridih in Probate Case No. 11 of 2010 is not sustainable in law. Accordingly, the same is set aside so far as it relates to the proposed amendment at serial no.(i) and the proposed amendment at serial no.(i) as made in the application dated 11.05.2017 by the petitioner is allowed.

13. It is made clear that in view of the amendment of the proceeding, the defendants/opposite parties in the probate proceeding be given an opportunity to file additional written statement if any within the time to be fixed by the learned Principal District Judge, Giridih.
14. This writ petition is allowed accordingly.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 18th April, 2024
AFR/Sonu-Gunjan/-