

IN THE COURT OF DISTRICT JUDGE, BALRAMPUR

Present: Narendra Bahadur Yadav, H.J.S.

Civil Revision No.-13/2021

(Computerized No.- 15/2021)

Udayveer Singh S/o Raghupat Prasad Singh R/o Village Madhnagari
Pargana, Tehsil Tulsipur, present R/o-Nai Bazar Pargana, Tehsil Tulsipur,
Dist.-Balrampur

.....Revisionist.

Versus

1. Samsudduha S/o Bhaggan
2. Barsati S/o Maula
R/o Mohd. Nai Bazar Kasba, Pargana, Tehsil and Dist.-Balrampur.
3. Ramu Singh S/o Raghupat Singh
4. Shyamu Singh S/o Raghupat Singh
R/o Village-Madhnagari Pargana, Tehsil and, Dist.-Balrampur
.....Oppoiste Parties.

JUDGMENT

Heard learned counsel of revisionist on the point of admission of instant revision and perused the impugned order as well as lower court record.

2. Vide impugned order dated 14.09.2021 amendment application filed by plaintiff of the suit was allowed by learned lower court. Vide impugned order the plaintiff has been allowed to insert additional relief regarding ejection of the defendant from land in question. The cause of action arisen in such respect has been mentioned as commenced since February 2016 to July 2021.

3. The impugned order has been assailed filing instant revision mainly on the grounds that the learned lower court committed irregularity and illegality while passing impugned order. It has also been mentioned in the memo of revision that in the garb of amendment entire nature of the case has been changed.

4. The lower court reveals that the learned lower court had rejected one amendment application on earlier occasion but considering the direction of revisional court which was filed against such order, the subsequent amendment application was allowed vide impugned order. The amendment application was filed after conclusion of evidence at the stage of argument. By way of amendment original cause of action

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regarding permanent injunction and original relief has not been omitted from the sphere of the plaint but additional relief regarding ejection from the land in question has been inserted through amendment.

5. Whether construction was raised since 2016 or it was raised much prior to the date of the filing of the suit is a matter of merit and no opinion can be expressed at this stage in such regard.

6. After incorporation of the proposed amendment the pecuniary jurisdiction of the lower court shall be ousted and same shall be triable by court of Civil Judge (Sr.Div.). If the case is not transferred to the court concerned by District Judge exercising administrative power, the lower court shall be under obligation to return the plaint for filing before the competent court having pecuniary jurisdiction to try the suit, denovo trial will commence in compliance of law laid by Hon'ble Supreme Court in **M/s EXL Careers and anr. vs. Frankfine Aviation Services Private Ltd. AIR 2020 SC 3670**. In such referred case Hon'ble Supreme Court was pleased to overruled the law laid in **Oriental Insurance Company Ltd. vs. Tej Paras Associates and Exports Private Ltd.** and followed the law laid in the case of **ON Gas Corporation Ltd. vs. Modern Construction and Company AIR 2014 SC 83**.

7. In **Maitrayee v. Prabir, AIR 1982 SC 17** Hon'ble Supreme Court was pleased to observe, when by proposed amendment no serious injury or injustice is likely to be caused to the opponent, the Court should not lightly interfere with discretion exercised allowing the amendment in passing of cogent reasons and compelling circumstances.

8. Undoubtedly after amendment the trial shall commence denovo in respect of amended facts and relief sought in such regard but both the parties shall be at liberty to get the all issues resolved on merit in a single case. Thus the inserted facts through amendment in the plaint shall pave the way to avoid multiplicity of the proceedings. It is general proposition of law that the multiplicity of the proceedings should be avoided and actual and incidental issues must be resolved, if possible, through a single proceeding.

9. In regard with incorporated facts through amendment the revisionist/defendant shall be at liberty to file W.S./Additional W.S. rebutting the facts inserted through amendment. The necessary issues shall also be framed in such regard. If amended facts are allowed to continue as it is, the revisionist/defendant shall neither be seriously prejudiced nor legal injury shall be caused to him; provided the case be

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taken by trial court on day to day basis without allowing adjournment of either party; so as to ensure to see the dawn of the decision on merit. In the light of above observations and without expressing any opinion on merit of the case instant revision is liable to be dismissed.

ORDER

Instant civil revision no.13/2021 is dismissed in limine at the stage of admission in the light of observations made above. Let entire record be transmitted to the court concerned to merge with original case. After registering it as civil revision.

Dated-29.09.2021

N B Yadav 29/09/2021
(Narendra Bahadur Yadav)
District Judge
Balrampur.

Judgment signed, dated and pronounced in open Court today.

Dated-29.09.2021

N B Yadav 29/09/2021
(Narendra Bahadur Yadav)
District Judge
Balrampur.

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