

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**C.M.P.No. 472 of 2024**

Smt. Arti Gupta, aged about 93 years, wife of Late S.K.Gupta,  
Resident of Pugmil, P.O.-Hazaribag, P.S. Sadar, District-  
Hazaribag. .... ...Petitioner

Versus

1. Civil Surgeon, Sadar Hospital, Hazaribag, P.O. & P.S.-  
Hazaribag, District-Hazaribag.
2. State of Jharkhand through Deputy Commissioner, Hazaribag,  
P.O. & P.S.-Hazaribag, District-Hazaribag .... ...Opp. Parties

-----

**CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND**

For the Petitioner : Mr. Yogendra Prasad, Advocate  
For the Opp. Parties : Mr. Jai Prakash, A.A.G.IA  
: Mrs. Chatali C. Sinha, A.C. to A.A.G. IA

-----

**C.A.V. on 27.11.2024 : Pronounced on 29.11.2024**

-----

The instant C.M.P. has been directed on behalf of the plaintiff/petitioner against the order dated 08.02.2024 passed in Civil Appeal No. 89 of 2019 (Smt. Arti Gupta vs. Civil Surgeon, Hazaribag & Anr.) by the Addl. District & Sessions Judge-VI, Hazaribag whereby the petition under Order 6 Rule 17 C.P.C. read with Section 151 of C.P.C. has been rejected.

2. The learned Counsel for the petitioner has submitted that he has instituted the suit for declaration of title in regard to the property in question in the Court of Civil Judge (Sr. Division)-II, Hazaribag which was registered as Suit No. 169 of 2012. That very suit was dismissed on 02.04.2019.

3. Aggrieved from the impugned Judgment dated 02.04.2019, the Title Appeal No. 89 of 2019(Arti Gupta vs. Civil Surgeon, Sadar Hospital & Other) which is pending in the Court

of District Judge-IV, Hazaribag. In that Appeal the petitioner/plaintiff had preferred an Amendment Application to amend the pleadings of the plaint and that Amendment Application was rejected by the learned Court of Additional District Judge-IV, Hazaribag vide order dated 08.02.2024.

4. It has been further submitted that the very Amendment Application of the petitioner/plaintiff was rejected on the ground that there was no due diligence on the part of the plaintiff to seek the amendment in the plaint while he had the thorough knowledge of the facts which he wanted to insert in the plaint.

4.1 Further the Amendment Application has also been rejected on this ground that same was moved very belated at the stage of appeal while after conclusion of evidence the suit of the plaintiff was also dismissed. The said finding of the learned Trial Court is perverse and since the amendment can be moved at any stage which may also be moved at the stage of appeal as well which is in continuation of the suit. In support of his contention, the learned Counsel for the petitioner relied upon the case law 'Pankaja and Another vs. Yellappa (D) by Lrs and Others (Civil Appeal Nos. 4983-4984 of 2004 (Arising out of S.L.P.(C) Nos. 3089-3090 of 2004) decided on 05.08.2004; Mahila Ramkali Devi and others vs. Nandram (D) Thr. LR. and others (Civil Appeal No. 2366 of 2010 Judgment dated 14 May,

2015; Surendra Kumar Sharma vs. Makhan Singh (Civil Appeal No. 6400 of 2009 (Arising out of SLP (C) 30468 of 2008) Judgment dated 18.09.2009.

5. Per contra, the learned A.A.G.-IA vehemently opposed the contention made by the learned Counsel for the petitioner and contended that the suit of plaintiff was for simple declaration of title in regard to the property in question. In that suit the plaintiff was very much aware that on the land in question Trauma Centre had been erected. In that suit the plaintiff in evidence has admitted that Trauma Centre had been erected on the land in question in the year 2012. Even then no consequential relief was sought by the plaintiff in his plaint seeking the delivery of the possession of the land in question. Therefore, the very suit of the plaintiff was dismissed by the Trial Court being hit by the provision of proviso **Section 34 of Specific Relief Act**. Against the dismissal of the suit the appeal was preferred on behalf of the petitioner/appellant and at the stage of appeal this amendment was sought by the plaintiff seeking the demolition of the Trauma Centre erected on the land in question and also for delivery of the possession of the land in question. The Amendment Application of the plaintiff has been rightly rejected by the learned Trial Court same needs no interference.

6. Heard and perused the record.

7. From the very perusal of the plaint which is Annexure No. 1 of this C.M.P. it is found that the plaintiff Smt. Arti Gupta has averred herself to be the wife of S.K.Gupta who was the sole legal heir of Rai Sahab Surat Kumar Gupta. The land in question happened to be recorded tenant in the name of Rai Sahab Surat Kumar Gupta measuring 1.16 acre situated in village Nawada, Thana No. 139, appertaining to Khata No. 1, Plot No. 149/255. After death of Rai Sahab Surat Kumar Gupta his sole son S.K.Gupta inherited the very land by way of succession and had been paying the rent of the same to the concerned Authorities. After death of S.K.Gupta his wife Smt. Arti Gupta who is the sole legal heir became the tenant of the land in question details of which is given in schedule-A at the foot of plaint. The plaintiff came to know from the newspaper report that the M.P. of Hazaribag Constituency had inaugurated the Trauma Centre built on the land in question and from the enquiries made by the plaintiff she came to know that the land had been acquired without knowledge of the plaintiff for the purpose of Trauma Centre. The notice was issued to the defendants under Section 80 of C.P.C. but reply of the same was not given. Hence the cause of action to file the suit arose to declare the title of the plaintiff in regard to the land in suit. This plaint was filed on behalf of the plaintiff on 17<sup>th</sup> September, 2012.

7.1 This Suit No. 169 of 2012 was dismissed by the Trial Court vide Judgment dated 02.04.2019. The copy of the Judgment is Annexure No. 2 of this petition. The plaintiff has preferred the Appeal against the impugned Judgment dated 02.04.2019 which was registered as Title Appeal No. 89 of 2019(Smt. Arti Gupta vs. Civil Surgeon Sadar Hospital, Hazaribag & Ors.). That very Appeal is pending in the Court of District Judge-IV, Hazaribag.

7.2 In this Appeal the plaintiff/petitioner has filed the application under Order 6 Rule 17 of C.P.C. along with Section 151 of C.P.C. with these averments that during pendency of the suit defendant had raised the substantial construction upon the land in suit. The Pleader Commissioner was also appointed who also reported that the construction on the land in suit had been erected. That suit was also dismissed for not seeking the recovery of possession. Therefore, by way of amendment he sought the relief to be amended in regard to demolition of the construction raised during pendency of the suit and also to deliver the possession of the same to the plaintiff. This Amendment Application is Annexure No.3 of this petition.

7.3 Herein it would be pertinent to reproduce the provisions of **Order 6 Rule 17 of C.P.C.**

**[17. Amendment of pleadings.-** The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on

such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]

7.4 Herein the guideline for amendment in the pleadings are laid down in view of settled legal position of law.-

(i) the amendment in the pleadings may be moved at any stage of proceeding even at the stage of appeal as well if the same is necessary to decide the real controversies between the parties and the same could not be raised prior commencement of the evidence despite due diligence.

(ii) the amendment in the pleadings cannot be allowed if the nature of the plaint case or defence case is changed.

(iii) no such amendment can be allowed if from the amendment the rights of other party are prejudiced which have been accrued to that party.

(iv) the delay in moving the amendment application is not fatal if same was caused beyond the control of party who had exercised due diligence to seek the amendment.

(v) the amendment in regard to subsequent events should ordinarily be allowed.

(vi) Amendment for new relief should not be time barred.

7.5 In the case in hand the plaintiff has filed the suit against the State in regard to the land in question of which she has averred herself to be the recorded tenant from the lifetime of the father of her husband. **In this suit the plaintiff has sought the simple relief for declaration and has sought no**

**consequential relief for delivery of the possession on which the defendants had already raised the Trauma Centre.** This suit of the plaintiff was also dismissed on merit by the Trial Court on the very ground that the suit of the plaintiff was barred by the proviso of **Section 34 of the Specific Relief Act.**

7.6 From the very perusal of the Judgment which is Annexure No.2 of this petition, it is found that **P.W.1 Arti Gupta** in her cross-examination has admitted **that the building was constructed by the Sadar Hospital over the land in the year 2012. P.W.5 Bishnu Dayal Mahto** has also stated that **he had made the local inspection of the property in suit and found Trauma Centre existed on the suit property of area of 1.16 acres, Plot No. 149/255, Khata No.1 village Nawada.** He has proved the report as Ext. 5.

7.7 **As such it is evident that the plaintiff was very much aware that the Trauma Centre had already been erected in the land in suit in the year 2012 at the very time of institution of suit.**

7.8 The plaintiff who has sought the proposed amendment in the plaint seeking demolition of the Trauma Centre from the land in suit and also for delivery of the possession having pleaded that this Trauma Centre was erected during pendency of the suit.

7.9 The plaintiff had filed the original suit against the State seeking simple declaration of the title. In the original plaint it is stated that prior notice under Section 80 of C.P.C. to the State had been given for the relief sought.

7.10 Herein by way of proposed amendment the plaintiff has averred that during pendency of the suit the Trauma Centre has been erected in the land in suit and after demolition of the same he prays for delivery of possession of the land in question from the defendants. **This proposed amendment is in regard to the new cause of action and the new relief as well. Before seeking this amendment, it was incumbent upon the plaintiff to give prior notice to the State under Section 80 of C.P.C. pleading the new cause of action in regard to the construction of Trauma Centre in the land in suit and also for the delivery of the possession of the land on which the Trauma Centre has been erected after having demolished the same. In the Amendment Application itself it is nowhere mentioned by the plaintiff that he has given any notice to the State under Section 80 of C.P.C. in regard to the new cause of action for the new relief for delivery of possession of the land in question after demolition of the Trauma Centre. It was mandatory for the plaintiff to give the notice under Section 80 of C.P.C. to the State for this**



**new prayer based on new cause of action prior to seeking amendment in the plaint.**

**7.11 Therefore, the very Amendment Application filed on behalf of the plaintiff is not maintainable on this sole ground for not giving prior notice under Section 80 of C.P.C.**

**7.12** The Hon'ble Apex Court held in **Bishandayal and sons vs. State of Orissa and Others AIR 2001 Supreme Court 544** that notice under Section 80 of C.P.C. given in respect of the plaint as it originally stood. Amended plaint on the basis of entirely new cause of action based on new facts and events taking place after filing of the original plaint the fresh notice regarding the new case not given the suit based on such cause of action is not maintainable.

**Para 16** reads as under:

*16. There can be no dispute to the proposition that a notice under S. 80 can be waived. But the question is whether merely because in the amended written statement such a plea is not taken it amounts to waiver. This contention was argued before the appellate Court. Even otherwise we find that in the suit itself Issue No. 4 had been raised as to whether or not there was a valid and appropriate notice under S. 80. Such a point having been taken in the original written statement and an issue having been raised, it was not necessary that in the amended written statement such a plea be again taken. On behalf of the respondents, reliance has been placed on the case of Gangappa Gurupadappa Gugwad v. Rachawwa, reported in AIR 1971 SC 442, wherein it has been held that where the plaintiff's cause of action is against a Government and the plaint does not show that notice under S. 80 was served, it would be duty of the Court to reject the plaint. In this case the*

*original notice was only in respect of a claim under the plaint as it originally stood. That claim was on the basis that there was a concluded contract and that the appellants had already acquired rights in the Mill and the lands. As has been fairly conceded those reliefs were not maintainable and were given up before the appellate Court. The amended plaint was on an entirely new cause of action. It was based on facts and events which took place after the filing of the original plaint. It was a fresh case. Now the claim was for specific performance of the agreement alleged to have been entered into on 29th December, 1978. Admittedly no notice under S. 80, C.P.C. was given for this case. As there was an issue pertaining to notice under S. 80, the trial Court should have dealt with this aspect. The trial Court failed to do so. It was then pressed before the appellate Court. In our view the finding in the impugned judgment that the suit based on this claim was not maintainable is correct and requires no interference. If a new cause of action is being introduced a fresh notice under S. 80, C.P.C. would be required to be given. The same not having been given, the suit on this cause of action was not maintainable.*

8. In view of the above, the rejection of the Amendment Application by the learned court-below is proper though based on different finding. In view of the finding given by this Court hereinabove the rejection of the Amendment Application by passing the impugned order requires to be affirmed. Accordingly, this C.M.P. deserves to be dismissed.

9. This C.M.P. is hereby **dismissed**. The impugned order passed by the learned court-below though based on different finding **is being affirmed** in view of the finding given by this Court hereinabove.

**(Subhash Chand, J.)**

P.K.S./A.F.R.