

Misc. 17/2014

3/5/2014

Order arises out of petition No.564/2014 filed U/O 6 Rule 17 of CPC for amendment of schedule of plaint and petition U/O 39 Rule 1 & 2 CPC

Petitioner's case in brief is that due to mistake or otherwise, the name of Smti. Sehnaj Begum, daughter of Late Gulam Hussain has not been impleaded in the plaint at the time of filing of the suit.

That due to mistake the boundary of the land in the schedule of the plaint is wrongly inserted as East- Land and Sultan's Road, West- Tocklai River and Ikram Borbora, North- Land of Babulal Sahu, South- Entrance Road from Chamber Road instead of East- Defendant's land, West- Defendant's land, North- Land of Bakelal Sahu, South- 17 x 50 ft. entrance Road from Fancy Ali to suit land and defendant's land. Situated thus, prayer has been made to insert the correct boundary in the schedule of the plaint.

O.P. filed written objection, wherein it is stated that the petition is liable to be dismissed as at this stage, Smti. Sehnaj Begum cannot be impleaded. It is also stated that proposed amendment shall change the character as well as identity of the suit land.

Heard, perused the available materials on record which reveals that petition is absolutely silent regarding why and how Sehnaj Begum is to be impleaded in the instant suit. Pleading is also silent regarding any cause of action which arises against Sehnaj Begum or in favour of Sehnaj Begum. Therefore, in absence of specific reason this court could not come to a conclusion as to whether Sehnaj Begum is required to be impleaded either as plaintiff or as defendant. Therefore, the first part of the petition is rejected.

So far the second part of the prayer is concerned, it is seen that in the main suit issue has not yet been framed i.e. trial has not yet began. It is probable that due to mistake or otherwise, the boundary in the schedule of plaint was wrongly inserted which would ultimately affect in the merit of the case and also in adjudication of the matter. Therefore, the prayer made by the plaintiff to amend the schedule of the plaint is allowed. Moreover, such amendment would not cause prejudice to the defendant as he would get chance to file written statement (if felt necessary by him) against the plaint so amended.

Bench Assistant is directed to do the needful for correction of the schedule of the plaint in presence of learned counsel of the plaintiff. Misc. case is accordingly disposed off.