

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2136 of 2011

1. Dinesh Prasad S/O Late Biswanath Prasad R/O Mokama, Farsi Muhalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna, At Present Residing At Sibandih, Bokaro, P.O. And P.S. And Distt.- Bokaro (Jharkhand).

.... Petitioner/s

Versus

1. Gupteshwar Prasad S/O Late Vishwanath Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
2. Shashi Bhushan Prasad @ Chappu S/O Gupteshwar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
3. Satish Kumar @ Pintu S/O Gupteshwar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
4. Guddu Kumar S/O Gupteshwar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
5. Babbu Kumar S/O Gupteshwar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
6. Tapeswar Prasad S/O Late Vishwanath Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
7. Gita Devi W/O Tapeswar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
8. Ashok Kumar S/O Tapeswar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
9. Mukesh Kumar S/O Tapeswar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
10. Pawan Kumar S/O Tapeswar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
11. Pankaj Kumar S/O Tapeswar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
12. Mahesh Prasad S/O Late Vishwanath Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
13. Nageshwar Prasad @ Dippu S/O Mahesh Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
14. Lali Prasad S/O Mahesh Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
15. Vikash Prasad S/O Mahesh Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
16. Uma Devi W/O Mahesh Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar)
17. Asha Devi W/O Gupteshwar Prasad R/O Vill.- Pharasi Mohalla, Ward No.6, P.O. And P.S.- Mokama, Distt.- Patna (Bihar).

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. SIDHENDRA NARAYAN SINGH
For the Respondent/s : Mr. Rama Kant Singh
Mr. Satyendra Krishna Prasad

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 24-08-2015

The plaintiff of Title Suit No. 121 of 2007 has filed the present application aggrieved by the order dated 10.12.2010 passed by the Trial Court rejecting the application filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (for short 'the Code'). One of the main reasons for rejecting the application is that the same was filed at a much belated stage and is, therefore, in the teeth of proviso to Order VI Rule 17 of the Code (after amendment).

Heard Mr. Sidhendra Narayan Singh for the petitioner and Mr. Prasad for the defendants-respondents.

The suit was filed for partition of 1/3rd share in the suit property as well as preparation of separate takhta by appointing Advocate Commissioner and thereafter to pass a final decree. The plaintiff stated *inter alia* that both parties of the suit are sons of Late Bishwanath Prasad or his descendants. After death of Late Bishwanath Prasad, the elder brother (respondent no. 1) became karta and acquired certain more movable and immovable properties some of which were in the name of his wife. Since the 'Karta' became dishonest, the plaintiff found it difficult to remain joint and sought partition which was refused. Hence the suit. The defendants appeared and filed written statement separately. It was averred *inter alia* that there was neither unity of title nor unity of possession. They have



been separated since date of attaining majority. Several sales and purchases were made thereafter in their individual capacity details of those sales and purchases were set out therein. Having found the details of the alienations and acquisitions made by the other co-sharer(s) including the karta, the application (Annexure-1) was filed seeking appropriate amendment in the plaint and also in the relief for declaring those sale deeds as void. The defendants filed rejoinder (Annexure-2) thereto. The Trial Court, on a consideration of the rival submissions, rejected the same leading to filing of the present writ petition.

It has been contended on behalf of the petitioner that mainly two reasons have been assigned by the Trial Court for rejecting the application. Firstly, the application was filed at a stage when two defendant witnesses were examined and secondly, the same was in the teeth of the provision of Order VI Rule 17 of the Code. The Court has further observed that the plaintiff has not made out a case of acting with due diligence as the written statement was filed in the year 2008 whereas the instant application was filed on 16.8.2010. The other relevant consideration for allowing such application has escaped the notice of the Court. The petitioner took the plea that the written statement was in English and, as such, in spite of due diligence, he was unable to decipher the statements made therein and the steps

which required to be taken on filing of such written statement. In support of his contention, he has relied on the case of *Sajjan Kumar vs. Ram Kishan* reported in (2005) 13 SCC 89, *Abdul Rahman vs Mohd. Ruldu* reported in 2013 (1) BBCJ IV 29 as also an unreported order passed by the Apex Court in the case of *Usha Devi vs. Rijwan Ahmad and Ors* delivered on 17.1.2008

Per contra, the respondents have opposed the application and submitted that there is unexplained delay on the part of the plaintiff in seeking such amendment in the plaint. The reason assigned to meet the requirement of law as provided in the proviso to Order VI Rule 17 of the Code are not sound, cogent and reliable. To support the aforesaid contention, he has relied on 2014 (3) P.L.J.R. 680 (*Baijya Nath Sah vs. Government of Bihar*).

Order VI Rule 17 of the Code confers a wide jurisdiction on the Court to do complete justice between the parties and further to avoid multiplicity of litigation. The jurisdiction so vested in the Court is unfettered but, however, subject to certain exceptions. The amendment should not change the nature of the suit and/or cause a serious prejudice to the other side. It should also not be allowed if some vital admissions made by the defendant is/are sought to be withdrawn. The sole purpose of the provision is to resolve the real controversy between the parties and not letting the parties to file

further litigations for the same or analogous relief(s).

In *Sajjan Kumar (supra)*, the Apex Court elaborating on the ambit and scope of Order VI Rule 17 of the Code held as under in paragraph 5 of the report:

“5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

It has been argued on behalf of the petitioner that foundation of the amendment was already laid in the plaint where it was stated that certain sales were also effected by the Karta of the family who had become dishonest. The written statement disclosed those sales and the acquisitions propelling the plaintiff to file application for amendment in the plaint to challenge the legality thereof. Noticing this salient fact, the Apex Court in *Abdul Rahman*



(*supra*) held that if the foundation of the amendment is laid in the plaint then the amendment in the plaint at the subsequent stage should invariably be granted particularly when such amendment is not going to alter the claim or cause of action. The ultimate cause of justice and avoidance of further litigations are the two corner pillars which the Court should always keep in focus while considering such amendment in the pleadings.

The Counsel for the respondent has submitted that there was unexplained delay in filing of the application which demonstrably prove that the plaintiff did not act diligently. If that be the case then the proviso to Order VI Rule 17 of the Code does not permit such amendment. The party must be diligent is the requirement of law. The plaintiff-petitioner has taken a ground that the written statement served on him by the defendants was drafted in English. The plaintiff does not know English. In such circumstance, there was delay in filing the application. The words 'due diligence' cannot be given a straight jacket interpretation. It will depends on the facts and circumstances of each case. Moreover, delay in filing such application may be only one of those circumstances under which such prayer can be refused. The Trial Court was required to take into consideration the other relevant aspects of the matter which has not been taken resulting in serious flaw in the order.

In the case of *Usha Devi* (unreported judgment of the Apex Court), the suit was filed in 2002 for permanent injunction. Issues were framed whereafter an application for injunction was filed and the plaintiff was examined. In 2004, an amendment petition was filed. The Trial Court rejected the same on the ground that the suit had progressed. Writ petition filed thereagainst was dismissed. On challenge before the Hon'ble Apex Court, the amendment was allowed in order to do complete justice between the parties.

In the case at hand, the Trial Court, in order to do complete justice between the parties, should have allowed the amendment on imposition of cost to offset the inconvenience caused to the defendants.

For the reasons aforesaid, the application is allowed. The order of the Trial Court dated 10.12.2010 passed in Title Suit No. 121 of 2007 is set aside.

Pankaj/-

(Kishore Kumar Mandal, J)

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