

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6022 of 2012

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1. MD. MUSTAFA SON OF NOOR MOHAMMAD
2. MD. CHAND SON OF LATE MOHAMMAD SAKUR
3. NAIMUM NISHA W/O LATE SUKHAL MIYAN
4. MD. AFROZ S/O LATE SUKHAL MIYAN
ALL RESIDENTS OF MOHALLA-RAVILGANJ, P.O. & P.S. RIVILGANJ,
DISTT.-SARAN.

.... PETITIONER/S

VERSUS

1. MD. AZIZ SON OF LATE ALLAUDIN
2. MD. SALLAUDDIN SON OF LATE ALLAUDIN
RESIDENT OF JALALPUR, P.O.-METHWALIYA, P.S.-RIVILGANJ,
DISTT.-SARAN

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. JITENDRA KISHORE VERMA, ADV.

Mr. Antani Kumar, Adv.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 08-12-2015

Petitioners/plaintiffs have challenged an order dated 02.12.2009 passed by the Munsif, Danapur in Eviction Suit No.5 of 1997 whereby and whereunder prayer for amendment in terms of Order 6 Rule-17 of the CPC made under petition dated 05.11.2009 as well as 18.11.2009 has been rejected.

2. It has been submitted on behalf of petitioners/plaintiffs that order impugned is bad in the eye of law because of the fact that instant eviction suit has been filed by the petitioner for evicting the respondent/defendant from the premises which he took on tenancy but after appearance of defendant/respondent, he had denied the inter se relationship whereupon it has become necessary to amend the

plaint for deciding substantial cause as well as for proper adjudication of the lis.

3. Learned counsel for the respondent objected such plea and submitted that it is hopelessly barred by the law of limitation.

4. From perusal of the pleading, it is apparent that originally suit for eviction was filed bearing Eviction Suit No.5 of 1997 wherein defendant appeared and filed W.S. on 29.09.1997. Amendment petition has been filed on 05.11.2009 as well as 18.11.2009 that means after elapse of twelve years. The proposed amendment has been made in the background of sale deed dated 01.11.1994 alleged to be executed by Najboon Nishan and Noor Jaha in favour of Najboon Khatoon wife of defendant not binding on the plaintiff.

5. Had there been an amendment for declaring the aforesaid document dated 01.11.1994 null and void, on account thereof, it must have been made within three years, the period of limitation. Therefore, the amendment so proposed is not found, for the present eclipse by the law of limitation. Moreover, is found ascertainable under duly contested suit.

6. In *B.K. Narayana Pillai v. Parameswaran Pillai* reported in (2000) 1 SCC 712 it has been observed under para-3.

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just.



The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.”

7. Recently in a case ***Ram Niranjana Kajaria, Jugal Kishore Kajaria Vs. Sheo Prakash Kajaria & Ors.*** reported in ***2015(4) PLJR 290***, it has been held:

“21. On amendments generally, in the decision reported in ***Revajeetu Builders & Developers v. Narayanaswamy & Sons and Others***, after referring to ***Gautam Sarup*** (supra), the principles on amendment have been summarized at Paragraph-63, it has been held as follows:-

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

8. Furthermore, from the order impugned, it is evident that learned lower court had not properly gone through the petition of amendment which has been filed as Annexure-1/A of the supplementary affidavit and that shows non-application of judicial mind.

9. In the aforesaid facts and circumstances of the case, order impugned is set aside. Petition is allowed at the cost of Rs.5000/- in the background of perceiving conduct of the petitioners/plaintiffs.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 8th day of Dec., 2015
Prakash Narayan

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