

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18132 of 2010

Bibi Fatma Khatoon W/O Shafi Alam, D/O Late Majeed Mian R/O Chand Kundria, P.S.- Mashrakh, Distt.- Saran, At Present Mouza Jasauli, Tola Khajuri, P.O. And P.S.- Kesaria, Distt.- East Champaran

.... Plaintiff- Petitioner/s

Versus

1. The State Of Bihar through Secretary Department of Law, Govt. Of Bihar, Patna
2. Rambali Devi @ Ramkali Devi W/O Ram Nath Pandey R/O Jasauli Tola Bangra, P.S.- Kesaria, Distt.- East Champaran
3. Ram Nath Pandey S/O Baldeo Pandey R/O Jasauli Tola Bangra, P.S.- Kesaria, Distt.- East Champaran

... Defendants 1 and 2-Respondents

4. Md. Mustafa S/O Majid Miyan Mataufa R/O Mohalla- Khoda Nagar, P.S.- Chatauni, P.O.- Motihari, Distt.- East Champaran
5. Md. Karimullah S/O Majid Miyan Mataufa R/O Mohalla- Khoda Nagar, P.S.- Chatauni, P.O.- Motihari, Distt.- East Champaran
6. Md. Habil S/O Majid Miyan Mataufa R/O Mohalla- Khoda Nagar, P.S.- Chatauni, P.O.- Motihari, Distt.- East Champaran
7. Md. Kabil S/O Majid Miyan Mataufa R/O Mohalla- Khoda Nagar, P.S.- Chatauni, P.O.- Motihari, Distt.- East Champaran
8. Bibi Asma Khatoon W/O Md. Taslim, D/O Majid Miyan Mataufa R/O Mohalla- Khoda Nagar, P.S.- Chatauni, P.O.- Motihari, Distt.- East Champaran
9. Bibi Rukma Khatoon W/O Noor Mohammad, D/O Majid Miyan Matofar R/O Vill.- Jamalpur, P.S.- Basantpur, P.O.- Madanpur, Distt.- Gopalganj, Present R/O Vill.- Jasauli, P.S.- Kesaria, Distt.- East Champaran
10. Bibi Sahana Khatoon W/O Abdul Kalam, D/O Majid Miyan Matofar R/O Vill.- Kawalpur, P.O. & P.S.- Turkauliya, Distt.- East Champaran

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Raghib Ahsan
Mr. SANJAY SINHA
For the Respondent/s : Mr. Bhupendra Naraian Singh
For the State Mr. Amaresh Kumar Singh, AC to G.A.9

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 03-05-2016

The plaintiff of Title Suit No. 02 of 2005 has filed the present writ application to challenge the order dated 13.08.2010, passed by the learned Sub Judge, 5th, Motihari rejecting the petition filed under Order 6 Rule 17 of the Civil Procedure Code(CPC) seeking amendment in the

plaint with respect to the date of the oral gift executed in her favour by the father.

A suit was filed for declaration of title and confirmation of possession. In the alternative, recovery of possession was prayed. It is stated the father being pleased with the services rendered by the plaintiff to him orally gifted the suit property which was accepted by the donee. According to the plaint, such oral gift was made on 22.05.1980. The trial of the suit began in which three witnesses were examined on behalf of the plaintiff. The witnesses deposed to the effect that the father of the plaintiff had gifted the suit property in the year 1985. In the affidavited examination-in-chief, these witnesses are said to have similarly stated. Having realized the mistake in giving out the date of oral gift as 22.05.1980, the petition (Annexure-2) seeking amendment was filed on 30.06.2010 stating that the amendment in the plaint be allowed to the effect that in place of 1980, it should be read as 1985.

A rejoinder thereto was filed by the contesting defendants-respondent on 07.07.2010 stating that by such amendment sought by the plaintiff a valuable right accrued in favour of the contesting defendants shall be defeated as the witnesses examined till date had deposed that such oral gift was made in 1985. The contradiction in the pleadings and the evidence of the witnesses would show the frivolousness of the case put up by the plaintiff. The defendants-respondent also contended that prior to this, Title Suit No. 110 of 1991 was filed by the present respondent(s) against the father of the plaintiff seeking a relief for specific performance of contract in which no such case was pleaded by the father. The contention of the plaintiff that 1980 written in the plaint as the year of oral



gift was a typographical mistake/error is not fit to be accepted. The plaintiff through the amendment wants to introduce new facts which are not permissible. Upon consideration of rival contentions the trial court, under the impugned order, rejected the petition seeking amendment observing that earlier also an amendment was sought by the plaintiff which was allowed but corresponding correction/amendment in the plaint was not made. The trial of the case had begun whereafter the present application was filed in order to do away with the contradiction in the deposition of the witnesses and thereby to defeat the valuable right accrued in favour of the contesting defendant(s).

Heard Mr. Raghib Ahsan, Sr. Counsel on behalf of the plaintiff-petitioner and Mr. Bhupendra Narain Singh who made counter submission on behalf of the contesting defendant-respondents.

It has been submitted by the petitioner that the amendment sought in the plaint is only with respect to a typographical mistake in relation to the year of oral gift made by the father in favour of the plaintiff. Such amendment shall not change the nature of the suit. The real controversy between the parties should be allowed to be placed on record in order to do complete justice between them through the process of the Court. It is a clear case of typographical mistake/error as even the witnesses in their affidavited examination-in-chief had correctly set out the date of oral gift by the father in favour of the plaintiff. The ends of justice shall be met only when the amendment is allowed and the real controversy between the parties is brought before the court. The defendant(s) in the event of allowing the application shall have right to file additional written statement and even get the witnesses of the plaintiff

recalled for cross-examination or further cross examination. No prejudice, therefore, shall be caused to the defendants-respondent.

Per contra, the counsel for the respondent(s) supported the impugned order contending that after amendment made in the Order 6 Rule 17 of the CPC the court is not empowered to allow such amendment in the pleadings/plaint until it is shown that in spite of due diligence such defect in the pleadings could not be noticed.

I have heard the parties and perused the materials on record.

In **Majistar Choudhary vs. Jitu Choudhary (2007(2) PLJR 831)** on which Mr. Ahsan has placed reliance, this Court while upholding the amendment allowed by the trial court held that all issues where are necessary for decision of the case is to be considered and decided by the court and for the said purpose no technical plea should be permitted to be raised and upheld against the amendment petition. Mr. Ahsan has also relied on the case of **Smt. Domni Devi vs. Neuri Kueri (2008 (1) PLJR 539)** wherein this Court dealing with the rule-provisions held that one of the main objects thereof is to avoid multiplicity of the litigations and to do complete justice between the parties. Incidentally, it may be observed that it is not the case of the respondents that such amendment shall change the nature of the suit. Only the date or year of oral gift is sought to be changed. The Court would further notice that in the affidavited examination-in-chief the witnesses had stated about the year of the oral gift which those witnesses deposed in course of their respective depositions. An error in narrating the date of the year of the oral gift in the plaint may be a typographical error which can always be corrected if the bonafide is shown. The purpose of the amendment under



Order 6, Rule 17 on which strong reliance has been placed by the respondent, was considered by the Apex Court in **Ajendraprasadji N. Pande and Anr. vs. Swami Keshavprakeshdasji N. and Ors. (2007 AIR SCW 513)** and found speeding up the disposal of the suit. The proviso to Order 6, Rule 17 is also not couched in strict terms. The Court has to examine whether the application presents any such case. The said proviso, in my view, shall have no application in the case as the amendment sought is formal in nature that is to say to correct the relevant date of the event. It has been argued on behalf of the respondent(s) that by such amendment a valuable right of the respondent(s) shall be defeated/eroded as the contradictions in the pleadings and the deposition(s) would no longer be available to the respondent(s). I am unable to appreciate the said submission. A party to the suit is always entitled to explain and correct the mistake/error in the pleadings if found obvious or bona fide. The court can grant such correction provided no serious prejudice is caused to the respondent(s) and that the nature of the suit does not entirely change. This is because after amendment is allowed the other side(defendant) shall have a right to file additional written statement and re-summon the witnesses, if found necessary, for cross-examination. Taking shelter behind the technicality of the procedure, a rightful claim of the party cannot be defeated. No party has a legal and vested right to take advantage of the mistake which may be *bona fide*. Even if the year of the oral gift is changed it will remain a case of oral gift which the defendant(s) would be entitled to controvert.

Mr. Singh the counsel for the respondent relied on **J.Samuel vs. Gattu Mahesh (2012(1) PLJR (SC) 413)** in order to resist



the application where the Apex Court explained what is due diligence and what is typographical error. The term typographical mistake is defined as mistake made in printed/typed material during a printing/typing process. The term includes error due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. The question is whether it was a demonstrable case of negligence. In my considered view, the facts of the case do not demonstrate a case of negligence on the part of the plaintiff. After all, it is only a change in the year of the oral gift from 1980 to 1985. It was a typographical error which, in spite of due diligence, could not be brought to the notice of the court before commencement of the trial few witnesses of the plaintiff were examined.

In the case of **Laxmi Prasad Gupta 2014(3)PLJR 703**, this Court found the amendment justified even if the trial had begun and further that no serious prejudice shall be caused as only two witnesses were examined. The plaintiff has yet to produce evidence whereafter the defendant shall produce evidence. The proviso to Order 6, Rule 17 would not apply on all fours because the plaintiff is not introducing completely new facts and merely asking for correction of typographical mistake. The learned Judge while upholding the contention of the petitioner and observing so, relied on **Vidyabai vs. Padmalatha [2009 SC 1433= 2009 (2) SCC 409]** as also **J.Samuel** (supra). Considering thus, it is held that the learned trial court exercised its jurisdiction with material irregularity and thereby passed an order which is unjust and unjustified in law. The order impugned merits to be interfered with.

Indisputably in allowing such application the case shall be delayed and the defendant(s) shall be put to avoidable inconvenience

which needs to be replenished.

The application is allowed. The impugned order is set aside subject to payment of a cost in the sum of Rs. 1000/- to the contesting defendant(s).

(Kishore Kumar Mandal, J)

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