

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.21 of 2016

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1. Ramayan Pd. Bhagat S/o Late Nathu Ram Bhagat Resident of village - Madhura,
P.S. Narpatganj, District - Araria

.... Appellant/s

Versus

1. Most. Sudama Devi W/o Late Jag Narayan Bhagat
2. Munna Bhagat S/o Late Jag Narayan Bhagat
3. Nand Kishore Singh S/o Parsu Ram Prasad Singh
4. Smt. Renu Devi W/o Nand Kishore Singh
5. Rabindra Bhagat S/o Late Shiv Shankar Bhagat All residents of village -
Madhura, P.S. Narpatganj, District - Araria

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Prasad Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT AND ORDER

Date: 23-08-2017

05. **1.** The petitioner assails an order dated 06.02.2016 passed by learned Sub Judge Ist, Araria in Title Suit No.60 of 2005 whereby and whereunder an amendment petition filed on behalf of the petitioner-plaintiff has been rejected.
- 2.** From the impugned order, it can be easily noticed that the suit was filed in the year 2005 whereas the application seeking amendment was filed 11 years thereafter, on 14.1.2016. By way of amendment in the plaint, the petitioner wanted to change the description of the suit land in relation to area as given in Schedule 'A' of the plaint by substituting of '3' decimal in place of '2' decimal'. It



is also evident from the impugned order that the said petition seeking amendment was filed after closure of the evidence and when the arguments on behalf of the parties had already commenced.

3. The learned counsel appearing on behalf of the petitioner has submitted that the amendment which he had filed before the Court below was formal in nature inasmuch as only '3' was required to be mentioned in place of No.'2' and therefore, the Court below ought to have allowed the application for amendment being formal in nature. According to him, the amendment which was sought could not have altered the nature of the suit and in the interest of justice, the Court below ought to have allowed the application.

4. Learned counsel appearing on behalf of the defendants-respondents on the other hand, while defending the impugned order, has submitted that there is no illegality therein. He has submitted that the entire suit has been contested by the parties treating area of the disputed land to be 2 decimal. According to him only on the basis of certain information given in a report submitted by Amin, in order to change the stand which the petitioner had taken in the written statement filed the application seeking amendment. He has also submitted that said application does not satisfy the requirements of the Proviso to Order VI Rule 17 inasmuch as there is nothing to show that



despite due diligence, the plaintiff could not seek amendment before commencement of the trial.

5. I do not find any illegality in the impugned order rejecting the application filed on behalf of the plaintiff for amendment in the plaint. I find the substance in submission made on behalf of the respondents that the plaintiff appears to have made an attempt to change his stand contrary to what had been taken all through during the currency of the suit. Learned counsel appearing on behalf of the respondent is also right in his submission that the petition filed by the petitioner for amendment before the Court below did not satisfy the requirement of Proviso to Order VI Rule 17 of the CPC. I do not find any merit in this application. Thus this application is accordingly dismissed.

6. The interim order dated 01.08.2016 passed by this Court stand vacated.

(Chakradhari Sharan Singh, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

