

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.71 of 2016

- =====
1. Vijay Narain Singh,
 2. Jai Narain Singh, Both Sons of Late Brahmdeo Singh, Resident of Village and P.O.- KubuliRam, P.S.- Bangra, District- Samastipur.

.... Petitioners

Versus

Anil Prasad Singh Son of Late Baijnath Prasad Singh, Resident of Village and P. O-KubuliRam, P.S- Bangra, District- Samastipur

.... Respondent

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Appearance :

For the Appellant/s : Mr. Dhirendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date: 30-03-2018

Heard both sides.

The petitioners have filed this Civil Miscellaneous petition against the order dated 11.02.2016 passed in Title Suit No.2/2002/1852/2014 by which the petition of the petitioners filed under Order 6 Rule 17 has been rejected.

The petitioners are the plaintiffs. The petitioners filed suit for redemption of mortgage. During the pendency of the suit, the petitioners filed petition under Order 6 Rule 17 that due to inadvertence and ignorance, two plots as mentioned in the Mortgage deed dated 09.05.1975 were left out to be mentioned in the Schedule of the plaint. The learned court below rejected the petition on the ground that the amendment petition was filed after much delay.



Learned counsel for the petitioners submits that the amendment is only for correction in the schedule of the plaint by mentioning two plots, which has already been mentioned in the Mortgage deed dated 09.05.1975 and the same amendment will not change the nature of the suit. No further evidence is required to be adduced. The petitioners have filed suit for redemption of the land mentioned in the Mortgage deed dated 09.05.1975 but due to inadvertence two plots although mentioned in the mortgage deed could not be mentioned in the schedule of the plaint.

Mr. Choudhary Shyam Nandan, learned counsel for the respondent ardently opposed the prayer made on behalf of learned counsel for the petitioners and submitted that in view of the proviso under Order 6 Rule 17 any amendment petition after starting of the hearing of the suit should not be allowed unless the court comes to the conclusion that in spite of due diligence the parties could not have incorporated the matter in the plaint before commencement of the trial.

Learned counsel placed reliance on the case law, reported in **2014(1) PLJR 48**.

From submissions of both sides, I find that the plaintiffs filed amendment petition for merely incorporating two plots in schedule of the plaint. Both the plots were mentioned in the mortgage



deed dated 09.05.1975 and the plaintiffs filed the suit for redemption of mortgage. The plaintiffs have very categorically stated that due to ignorance and mistake of typist, those two plots were although mentioned in the deed of mortgage could not be incorporated in the schedule of the plaint. The order 6 Rule 17 itself says that “*the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties*”. After the amendment of 2002, the proviso has been added that “*amendment after start of the hearing of the suit should not be allowed unless the court comes to the conclusion that in spite of due diligence the parties could not have interpreted the matter before commencement of the trial*”.

From the facts, I find that the amendment is a very formal in nature. The subject matter of the suit is deed of mortgage and in the aforesaid deed of mortgage those two plots were mentioned with its boundaries and the plaintiffs only want to incorporate those two plots in schedule of the plaint. Therefore, on the face of it, it appears that the amendment is only of corrective nature but the Munsif-1, Samastipur, has committed jurisdictional error by rejecting the amendment petition of the petitioners.



Accordingly, the order dated 11.02.2016 passed in Title
Suit No.2/2002/1852/2014 is set aside and the Civil Miscellaneous
petition is allowed.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2018
Transmission Date	NA

