

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.51 of 2018

1. Shiromani Devi, wife of Late Kapildeo Prasad Yadav,
2. Barun Kumar, Son of Late Kapildeo Prasad Yadav,
3. Shailendra Kumar Yadav, Son of Late Kapildeo Prasad Yadav,
4. Shivendra Kumar, Son of Late Kapildeo Prasad Yadav,
All 1 to 4 Resident of Mohalla- Bhatta Bazar Town Purnea, Police Station-
Kanju Hat, District- Purnea
5. Nikki Kumari, Daughter of Late Kapildeo Prasad Yadav, Wife of Jitendra
Kumar Yadav, Resident of Mohalla- Sant Nagar, Madhubani, P.S.- Kanji
Hat, District- Purnea.

... .. Petitioners

Versus

1. Bijendra Nath Sen, Son of Late Nani Gopal Sen, Permanent resident of
Bhatha Bazar, K. Hat, Purnea. at present residing at Balmath Near Bandel
Church Kolkata.
2. Jaya Sen, Wife of Rabindra Nath Sen,
3. Tinku Sen, Son of Rabindra Nath Sen, Resident of 1705/2 B, Panch Kauri
Sadhu Khan Road, Purnea Street Factory Ground, P.O.- Nalgarh, P.S.-
Khardaha, District- North 24 Pargana.
4. Sibendra Nath Sen @ Shiv Nath Sen, S/o Late Nani Gopal Sen, Resident of
C.R. Park, Hill View East, S.B. Garia Road, Asansol West Bengal.
5. Babul Sen Gupta @ Babli Sen Gupta, W/o Late Ramendra Nath Sen,
Permanent resident of Bhatta Bazar, P.S.- K. Hat, District- Purnea at present
residing with Defendent Bijendra Nath Sen near Bandel Church, Kolkatta.

.... .. Respondents 1st set

6. Jivan Kumar Das, Son of Lal Das,
7. Ashutosh Lal Das, Son of Late Amit Lal Das,
Both 6 and 7 resident of Baar BAzar Baniyapatti Katihar, P.S.- Katihar,
District- Katihar.
8. Azimuddin, Son of Late Wazid Ali, Resident of Azad Nagar, Madhopara,
P.S.- K. Hat, District- Purnea.

... .. Respondents 2nd set

Appearance :

For the Appellant/s : Mr.Dr. Ratan Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 11-04-2019

This application under Article 227 of the
constitution of India has been filed by the petitioner for setting



aside the order dated 11.12.2017 passed by the Sub-Judge-III, Purnea in Title Suit No. 120 of 2003, as contained in Annexure-1 to the instant petition, whereby and whereunder the trial court has allowed the application filed by the respondent nos. 7 and 8 for amendment in the written statement.

2. The facts of the case, in brief, are that one Kapildeo Prasad Yadav (since deceased) had filed Title Suit No. 120 of 2003 for specific performance of contract impleading Bijendra Nath Sen, Sibendra Nath Sen and Babul Sen Gupta as defendants. After filing of the Title Suit No. 120 of 2003, written statement was filed on 22.05.2004 by the original defendant Vijay Kumar Yadav (since deceased) stating therein that the registered power of attorney was given to him by the legal heirs of Late Nani Gopal Sen and he sold part of the suit land to the respondent nos.6, 7 and 8 in the year 2000. The defendant nos. 7 and 8 also filed their written statement on 08.08.2006.

3. The plaintiff filed an amendment petition in the said title suit, which was allowed on 02.09.2005. In view of the order dated 02.09.2005, the plaintiff amended the plaint as per para 13(A) of the plaint. Subsequently, defendant nos. 7 and 8 filed an amendment petition whereby defendant nos. 6, 7 and 8



Jivan Kumar Das, Ashutosh Lal Das and Azimuddin respectively were added as defendant- 2nd set.

4. The defendant nos. 7 and 8 filed their written statement. However, in view of certain amendment in para 13(A) of the plaint, they filed an application wherein a prayer was made to amend their written statement. The proposed amendment of written statement was as under:-

“That Bijay Yadav executed three sale deeds dated 08.04.2000, 10.04.2000 and 25.09.2001 in favour of Ashutosh Lal Das and on the basis of the aforesaid three sale deeds Ashutosh Lal Das sold the land in favour of defendant no.8 Md. Azimuddin through two sale deeds dated 14.06.2002. The aforesaid sale deeds are valid and genuine and the defendants are in peaceful possession over the same by constructing their houses over the same.”

5. The petitioner contested the matter and opposed the proposed amendment of written statement. However, the learned Sub-Judge vide impugned order dated 11.12.2017, as contained in Annexure-1, allowed the application for amendment subject to payment of Rs. 3,000/- as cost.

6. Being aggrieved by the aforesaid order dated 11.12.2017, the instant application has been filed before this



Court.

7. Learned counsel appearing for the petitioner has submitted that the order impugned is not tenable in law. The respondent nos. 7 and 8 had already filed their written statement on 08.08.2006. The amendment in the plaint was made on 08.09.2005. They had ample opportunity to look into the pleadings made by the plaintiff. Once they had made their pleadings through written statement, there was no occasion for them to seek any amendment. The said amendment in the written statement without any new document will change the nature of the suit. He contended that the issues were framed as back as in the year 2010. The court below ought not to have allowed the application at such a belated stage.

8. On query, learned counsel for the petitioner admitted that the trial has yet not commenced.

9. Having heard learned counsel for the petitioner and perused the impugned order, it would be proper to refer the relevant provision under Order VI, Rule 17 of the Code of Civil Procedure, which provides for amendment of pleadings, hereinbelow :-

“Order VI, Rule 17. Amendment of Pleadings.-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:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10. From a reading of the aforesaid provision, it would be manifest that the trial court is vested with the jurisdiction to allow either party to alter or amend his pleadings at any stage of the proceeding. However, the proviso to Rule 17 creates an exception to the general rule whereby an application for amendment cannot be allowed after the trial has commenced unless the court is convinced that inspite of due diligence the party could not have raised the matter before commencement of the trial.

11. In the instant case, admittedly, the trial has yet not commenced. The proposed amendment, which has been allowed by the court below has been noticed hereinabove. I fail to understand as to how the said amendment would cause any



prejudice to the plaintiff when the trial has yet to commence.

Since the order impugned passed by the trial court does not suffer from any lack of jurisdiction and the same is also not perverse, in my considered opinion, no interference is warranted by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

12. The application is dismissed.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
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