

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.363 of 2019

Bishwanath Singh, Son of Late Gopalji Ray @ Late Gopal Singh, Resident of
Village-Pachlakhi, P.O. Pachlakhi, P.S. Nautan, District-Siwan.

... .. Defendant 2nd set-Petitioner

Versus

1. Jag Mohan Prasad, Son of Late Thakuri Prasad, Resident of village and P.O. Pachlakhi, P.S. Nautan, District-Siwan.
2. Raj Kumari Devi, Wife of Vyash Singh, Resident of village and P.O. Pachlakhi, P.S. -Nautan, District-Siwan.
3. Smt. Nirmala Devi, Wife of Dhrup Sah, Resident of village and P.O. Pachlakhi, P.S. -Nautan, District-Siwan.
4. Rama Choudhary, Son of Late Raghu Chaudhary, Resident of village and P.O.- Pachlakhi, P.S.- Nautan, District-Siwan.
5. Dineshwar Choudhary, Son of Late Shyam Choudhary, Resident of village and P.O. -Pachlakhi, P.S. -Nautan, District-Siwan.
6. Most. Kanti Devi, Wife of Manu Prasad, Resident of village and P.O.- Pachlakhi, P.S.-Nautan, District-Siwan.
7. Laxman Sah, Son of Late Manu Prasad, Resident of village and P.O. Pachlakhi, P.S.- Nautan, District-Siwan.
8. Bharat Sah, Son of Late Manu Prasad, Resident of village and P.O. Pachlakhi, P.S.- Nautan, District-Siwan.
9. Vijay Sah, Son of Late Manu Prasad, Resident of village and P.O.- Pachlakhi, P.S. -Nautan, District-Siwan.
10. Bechu Sah, Son of Late Manu Prasad, Resident of village and P.O.- Pachlakhi, P.S. -Nautan, District-Siwan.
11. Dinanath Sah, Son of Late Manu Prasad, Resident of village and P.O. Pachlakhi, P.S.- Nautan, District-Siwan.
12. Sanjay Sah, Son of Late Manu Prasad, Resident of village and P.O. Pachlakhi, P.S.- Nautan, District-Siwan.
13. Manju Devi, W/o Tunmun Prasad Jaiswal, D/o Late Manu Prasad, Village-Daluwan, P.O. Bhawani Chhapar, P.S. Banakta, District-Deoria (U.P.)
14. Meera Devi, W/o Shambhu Prasad, D/o Late Manu Prasad, Village-Kabilash, P.O. Gopalganj, P.S. and District-Gopalganj.
15. Shail Kumari, Wife of Late Birendra Prasad, Resident of Village-Pachlakhi, P.O. Pachlakhi, P.S. Nautan, District-Siwan.
16. Vivek Kumar Son of Late Birendra Prasad Srivastava Resident of village-Pachlakhi, P.O. Pachlakhi, P.S. Nautan, District-Siwan.
17. Vikash Kumar S/o Late Birendra Prasad Srivastava Resident of village-Pachlakhi, P.O. Pachlakhi, P.S. Nautan, District-Siwan.
18. Moko Devi D/o Late Birendra Prasad Srivastava, Resident of village-Pachlakhi, P.O. Pachlakhi, P.S. Nautan, District-Siwan.



19. Rinki Kumari, D/o Late Birendra Prasad Srivastava, Resident of village-Pachlakhi, P.O.-Pachlakhi, P.S.-Nautan, District-Siwan.

... .. Plaintiffs-Respondents

20. The State of Bihar through Collector, Siwan.
21. The Collector, Siwan.
22. The Circle Officer, Mairwa Circle, Mairwa, District-Siwan.

... .. Defendant 1st set-Respondents

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Appearance :

For the Petitioner : Mr. Raghav Prasad, Advocate
For the Respondents-State: Mrs. Nutan Sahay, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 28-06-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 12.10.2018 passed by the learned Munsif-II, Siwan in Title Suit No.335 of 1996 by which he has refused amendment to be made in the written statement of the defendant-petitioner.

3. It is submitted by the learned counsel appearing for the petitioner that the court below has failed to appreciate the submissions made by the petitioner before it. He submitted that the amendment sought for is formal in nature and in the interest of justice it ought to have been allowed.



4. On the other hand, learned counsel for the State submitted that there is no error in the order passed by the court below. She submitted that the application for amendment was filed after eleven years of filing of the suit without explaining as to how the amendment sought for are of any relevance. Under the circumstances, the court below rightly rejected the application filed under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC').

5. Having heard learned counsel for the petitioner and the State, I find from the materials on record that Title Suit No.335 of 1996 was filed by the plaintiffs-respondent for declaration of right, title and interest over the suit land and also for declaring that the defendants have no right over the same. The plaintiffs also prayed for confirmation of possession over the suit land. The defendant-petitioner appeared in the suit and filed his written statement on 18.08.1999 stating *inter alia* that the ex-landlord settled the land in question in favour of his father Gopalji Ray and he is coming in possession since then. After filing of the written statement, issues were framed on 08.12.2006. On 20.10.2016, the evidence on behalf of the plaintiffs was closed. Since then, the defendant-petitioner took several adjournments for leading evidence.



6. Thereafter, on 27.01.2017, an application under Order 6 Rule 17 of the CPC for amendment in the written statement was filed. The defendant wanted that in paragraph no. 22 at page 13, it should be added that over the suit land there are two *jamun* trees, four *seesam* trees and several other trees. The said application filed by the petitioner under Order 6 Rule 17 was rejected vide impugned order dated 12.10.2018. While passing the order, the court below has assigned the following reasons:-

- (i) The suit is quite old and the evidence on behalf of the plaintiffs have already been closed.
- (ii) The defendant has not assigned any reason as to why the amendment sought for is necessary.
- (iii) The court is not satisfied with the explanation given by the defendant that in spite of due diligence he could not have raised the matter before the commencement of the trial.
- (iv) The application has been filed by the defendant-petitioner just in order to delay the disposal of the trial.

7. Order 6 Rule 17 provides for amendment of pleadings. It reads as under:-

“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.”

8. The proviso to the aforesaid Order 6 Rule 17 would make it evident that an application for amendment would not be allowed after the commencement of the trial unless the court is satisfied that in spite of due diligence the party could not have raised the matter before the commencement of the trial.

9. Here, in the present case, the defendant-petitioner has failed to satisfy the trial court as to how the amendment sought for is necessary for the purpose of determining the real questions in controversy between the parties. That apart, not only the application was filed after commencement of the trial but also after the evidence on behalf of the plaintiffs was closed.

10. Furthermore, no plausible explanation was given by the defendant-petitioner as to why the amendment sought for could not have been raised before the commencement of the trial in spite of due diligence.



11. On the facts and in the circumstances, I find that the reasons assigned by the trial court for dismissing the application of the petitioner are neither illegal nor perverse.

12. Hence, I see no reason to interfere with the order impugned in exercise of the supervisory power under Article 227 of the Constitution of India.

13. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.07.2019
Transmission Date	NA

