

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.519 of 2019

1. Sushila Devi @ Sushila Kuer W/o Late Babban Singh
2. Manjeet Singh @ Manjit Kumar son of Late Babban Singh
3. Ranjit Singh son of Late Babban Singh
All are resident of village-Dehra, P.S.-Bhabhua, District-Kaimur at Bhabhua

... .. Petitioners

Versus

1. Manju Devi
2. Sunaina Devi
3. Shashi Patel
4. Sanoj Devi
All are daughters of Shri Ram Navami Singh, resident of village-Dehra, P.S.-Bhabhua, District-Kaimur at Bhabhua
5. Ram Surat Singh
6. Bhairo Nath Singh
7. Ram Dhawaja Singh
8. Jai Prakash Singh
Sl. No. 5 to 8 are sons of Late Lalan Singh
9. Lakshmi Devi wife of Bhairo Nath Singh
10. Vijay Bahadur Singh
11. Santosh Kumar Singh
Sl. No. 9 to 11 are sons of Ram Surat Singh
12. Ganesh Kumar (Minor) son of Santosh Kumar Singh
13. Pramod Kumar Singh
14. Manoj Kumar Singh
15. Mukesh Kumar Singh
Sl. No. 13 to 15 are sons of Bhairo Nath Singh
16. Priyansh Kumar (Minor) son of Pramod Kumar Singh
17. Amit Singh
18. Sujit Singh
Sl. No. 17 and 18 are sons of Sri Ram Dhawaja Singh
19. Pushpa Devi W/o Jai Prakash Singh
20. Chandan Singh
21. Kundan Singh
Sl. No. 20 and 21 are sons of Sri Jai Prakash Singh
22. Ram Dei Kuer W/o Late Lalan Singh
All are resident of village-Dehra, P.S.-Bhabhua, District-Kaimur at Bhabhua



... .. Respondents

Appearance :

For the Petitioners : Mrs K.M. Shashi Bala Verma, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-08-2019

This application has been filed by the petitioners for setting aside the order dated 30.11.2018 passed by the learned Sub-Judge-VIII, Kaimur at Bhabua in Title Suit No.399 of 2013 whereby the amendment petition filed on behalf of the plaintiffs under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure has been allowed with cost of rupees five hundred.

2. The petitioners are defendants in Title Suit No.399 of 2013.

3. Learned counsel appearing for the petitioners submitted that the order impugned passed by the trial court is bad in law as it failed to consider the compromise decree passed in the year 1971 in Partition Suit No.999 of 1970 and 264 of 2004. She contended that the plaintiffs have no concern with the property purchased by Late Babban Singh by the Stridhan Dhan of petitioner no.1. She contended that the plaintiffs have no right over the property at Varanasi and amendment petition dated 01.02.2016 for addition in Schedule "K" filed by the plaintiffs



was fit to be rejected.

4. Having heard learned counsel for the petitioners and perused the order impugned, I find that though the suit is of the year 2013, even the issues have not been framed as yet. In the original plaint, in paragraph 14, the plaintiffs had clearly mentioned that they have no knowledge about all the joint properties so they reserve the right to amend the schedule in future. Subsequently, they filed an application on 01.02.2016 under Order VI Rule 17 of the CPC and prayed for adding the property purchased in Varanasi in Schedule "K" of the plaint.

5. Taking into consideration the fact that the suit is still at initial stage and the amendment sought for is of formal nature, in order to adjudicate the controversy between the parties, the trial court allowed the application with cost of rupees five hundred and ordered the plaintiffs to amend the plaint within the prescribed time after depositing the cost.

6. Order VI Rule 17 of the CPC provides that the court may, at any stage of the proceeding, 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.

7. Proviso to Order VI Rule 17 provides 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 commencement of trial.

8. The aforesaid provisions would make it evident that discretion has been given to the court in the matter of amendment of the pleadings. The discretion vested in the court is required to be exercised liberally before commencement of trial. The only requirement for allowing the application for amendment before commencement of trial is that the same should be necessary for the purpose of determining the real questions in controversy between the parties. However, if the trial has commenced the discretion has to be exercised after being satisfied that in spite of due diligence, the party could not have raised the matter before commencement of trial.

9. As noted above, since the trial has not commenced and the trial court while allowing the application for amendment in plaint has exercised jurisdiction vested in it by law, I see no reason to interfere with the order impugned.

10. Having regard to the facts and circumstances



of the case, the trial court has rightly held that the proposed amendment was necessary with a view to effectually and completely adjudicate upon and settle all the questions in controversy between the parties.

11. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.08.2019
Transmission Date	

