

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.441 of 2019**

1. Shashi Bhushan Kumar son of Sri Shyam Bihari Prasad Singh, R/o Village-Nagar Nausa, P.O. and P.S.-Nagar Nausa, District-Nalanda, at present residing at C/1 Housing Colony, Lohiya Nagar, P.S. and P.O.-Kankarbagh, District-Patna
2. Smt. Sushila Devi wife of Sri Shyam Bihari Prasad R/o Village-Nagar Nausa, P.O. and P.S.-Nagar Nausa, District-Nalanda, at present residing at C/1 Housing Colony, Lohiya Nagar, P.S. and P.O.-Kankarbagh, District-Patna
3. Shyam Bihari Prasad Singh son of Late Ram Autar Prasad, R/o Village-Nagar Nausa, P.O. and P.S.-Nagar Nausa, District-Nalanda, at present residing at C/1 Housing Colony, Lohiya Nagar, P.S. and P.O.-Kankarbagh, District-Patna

... .. Petitioners/defendants

Versus

Ravi Bhushan Prasad son of Shyam Bihari Prasad Singh, R/o Village-Nagar Nausa, P.O. and P.S.-Nagar Nausa, District-Nalanda, at present residing at Mohalla-Quarter No. 38, Type-II (Postal), P and T Colony, Kidwaipuri, P.S.-Budha Colony, District-Patna

... .. Respondent/plaintiff

Appearance :

For the Petitioners	:	Mr. Ajit Narayan Sinha, Advocate
	:	Mr. Kumar Kaushlendra, Advocate
For the Respondent/s	:	Mr. Chandra Kant, Advocate
	:	Mr. Navin Kumar, Advocate
	:	Mr. Dharendra Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 26-07-2019

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



quashing the order dated 05.09.2018 passed in Title Suit No.167 of 2017 by the learned Sub-Judge-V, Patna City whereby he has allowed the petition filed by the respondent no.1 plaintiff under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (for short 'CPC')

2. Learned counsel appearing for the petitioner has submitted that the order impugned is wholly illegal, arbitrary and unjust. The court below has not applied its judicial mind and has passed the order impugned mechanically. He contended that no reason has been assigned by the court below for allowing the application filed by the petitioner.

3. Per contra, learned counsel appearing for the respondent plaintiff submitted that there is no error in the order passed by the court below. The trial court has stated in its order that the amendment petition is filed in time. It has also given a finding that the objection raised by the defendants is frivolous. The objection has been raised only in order to delay the disposal of the suit.

4. I have heard learned counsel for the parties and perused the materials available on record.

5. The short facts of the case are that the respondent/plaintiff has filed Title Suit No.167 of 2017 seeking



the following reliefs:-

(a) The right, title, interest and possession may be declared in favour of the plaintiff and against the petitioner/defendants of schedule 2 of property of the plaint.

(b) On adjudication it may be declared that sale deed dated 03.09.2010 and 21.07.2012 executed by plaintiff in favour of the petitioners no.1 and 2/ defendants no.1 and 3 respectively which is fully detail in schedule 2 of the plaint are fraudulent, forged, in operative showy without consideration, void and ab initio and not binding on the plaintiff.

(c) The defendants may be temporarily restrain not to alienate, sale, transfer and dispossess the plaintiff from Schedule-2 property till final disposal of the suit.

(d) The cost of the suit be awarded in favour of plaintiffs and against the defendants.

(e) Any other relief or reliefs as your honour may fit and proper may be awarded in favour of the plaintiff and against the defendants.

6. In a suit between the husband and wife, plaintiff's wife filed criminal case against the plaintiff, his father, mother and brother inter alia under Section 498A of the Indian Penal Code in the year, 2011. Thereafter, the plaintiff filed Matrimonial Case No.92 of 2011 in the Family Court, Patna. Subsequently, an application was filed on behalf of the plaintiff



under Order 6 Rule 17 read with Section 151 of the CPC seeking amendment in the plaint. The amendment sought to be introduced in the plaint is as under:-

"After Para 6 the New Para 6(A) be added as follows:-

6(A) That in 2010 plaintiff's father Shyam Bihari Prasad approached the plaintiff and convinced him that his wife may file case U/S 498(A) and get the property auction, sold confiscated and attached and he advised him to make Farzi transfer of his property in name of the defendants. Shyam Bihari Prasad also convinced the plaintiff that when there shall be divorce between husband and wife (i.e. plaintiff and his wife) he shall return the property by executing a deed of Ladavi. The plaintiff at their instance filed Matrimonial Case No.92/2011 in the Family Court, Patna for divorce and after filing the divorce case the plaintiff requested his father to make a written paper regarding surrender of the plaintiff's property so fraudulently and without consideration obtained. And accordingly the defendant No-2 Shyam Bihari Prasad executed a deed of



surrender on 28/04/2013 on his Letter pad under the heading "Santwana Patr" under his signature and seal of the Secretary of Balika Uchya Vidyalaya, Nagarnausa. Not only this the defendant No-2 also took signature of the plaintiff on several blank NJS worth Rs- 100/- (one hundred) each and on other blank Bond papers and defendant No-2 also got a deed of Power of Attorney executed in his name by plaintiff on 28/01/2011 by Registry."

7. The defendants contested the application filed under Order 6 Rule 17 of the CPC. They contended that if the proposed amendment is allowed the entire circumstances and nature of the suit would be changed.

8. After hearing the parties, the trial court vide impugned order dated 05.09.2018 allowed the application filed under Order 6 Rule 17 of the CPC.

9. On perusal of the order impugned dated 05.09.2018, I find that the two reasons assigned by the trial court for allowing the application under Order 6 Rule 17 of the CPC are that the application has been filed within time and that the defendants intend to linger the disposal of the suit.

10. Order 6 Rule 17 of the CPC relates to



amendment of pleadings. According to it, the court may allow the amendment at any stage of the proceedings 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.

11. The proviso of Order 6 Rule 17 stipulates 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. The proviso gives discretionary power to the court on the application of pleadings after the commencement of trial.

12. The pre-requisites for allowing an application for amendment of pleadings are thus two fold:-

- (i) The secure the ends of justice, and
- (ii) To determine the real questions of controversy between the parties.

13. In *Gurdial Singh and Others vs. Raj Kumar Aneja and Others* since reported in (2002) 2 SCC 445, the Supreme Court observed that amendment of pleadings consists of two parts:

- (i) In the first part, the word 'may' gives discretionary power to the court to allow or



disallow application of pleadings.

(ii) In the second part, the word 'shall' gives obligatory direction to the civil court to allow the application of pleadings if this amendment is necessary for the purpose of determining the real questions in controversy between the parties.

14. In the instant case, admittedly the trial has not commenced. Thus, the rider mentioned in the proviso to Order 6 Rule 17 was not attracted. The court in exercise of its discretionary power has committed no jurisdictional error in allowing the application filed by the plaintiff. However, before exercising the power, it ought to have assigned reason in support of the order. An order without reason causes prejudice to the person against whom it is passed. Recording of reasons is an essential feature of all judicial orders. In absence of reasons in the order deprives the superior court to know as to what prevailed in the mind of the court while passing the order.

15. In the instant case, the reasons assigned by the trial court for allowing the application filed under Order 6 Rule 17 do not suggest that the trial court either found the amendment necessary for the ends of justice or for the purpose of determining the real questions of controversy between the parties.



16. The reasons assigned by the trial court are that the application has been filed in time and that the defendants are opposing the same for lingering the matter. There is nothing stated in the order impugned as to how the defendants are responsible for lingering the suit.

17. Thus, I am of the opinion that virtually no good or relevant reason for allowing the application for amendment has been given by the trial court while passing the impugned order.

18. Hence, the order impugned dated 05.09.2018 passed by the learned Sub-Judge-V, Patna City in Title Suit No.167 of 2017 is set aside.

19. The matter is remanded back to the trial court. It shall be required to hear the parties afresh and dispose of the application filed under Order 6 Rule 17 of the CPC on merits.

20. It is made clear that this Court has not expressed any opinion with regard to the merit of the application filed under Order 6 Rule 17 of the CPC before the court below.

21. It has been submitted by the parties that the next date fixed in the case is 1st August, 2019. The parties



agree that they would appear before the court on 1st August, 2019 and would address the court on the application filed under Order 6 Rule 17 of the CPC.

22. The court below shall be required to hear the parties and dispose of the application filed by the plaintiff by a speaking and reasoned order forthwith.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	31.07.2019
Transmission Date	

