

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.375 of 2019**

=====

Suresh Prasad Singh @ Madan Prasad Singh, Son of Late Shatrudhan Prasad Singh, Resident of Village-Mahikaira, Police Station-Singhia, District-Samastipur.

... .. Defendant-Petitioner

Versus

Ashok Kumar Singh, Son of Ganesh Prasad Singh, Resident of Village and Post- Mahikaira, Police Station- Singhia, District- Samastipur.

... .. Plaintiff-Respondent

=====

Appearance :

For the Petitioner : Mr. Sunil Prasad Singh, Advocate
For the Respondents :

=====

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

Date : 04-07-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 07.01.2019 passed by the Sub Judge-III, Rosera, Samastipur in Partition Suit No.67 of 2013 by which the petition filed on 27.02.2018 by the plaintiff/respondent under Order 6 Rule 17 along with 151 of the Code of Civil Procedure (for short 'CPC') has been allowed.

2. It is submitted by the learned counsel for the petitioner that the impugned order is bad, unsound and clearly an order showing miscarriage of justice. He has submitted that the amendment sought for by the plaintiff in the plaint ought not have been allowed, as the same was filed almost three years after filing



the suit. He has contended that the amendment is not only in the application but also in the relief claimed for by the plaintiff.

3. Having heard learned counsel for the petitioner and perused the record, I find that while arguing the case the defendant no.5 had himself stated that he had no objection in respect of amendments in the plaint, but he had objection with regards to amendment in the application claimed by the plaintiff. It would further appear from the record that the trial of the case has yet not been commenced, as the issues have not been framed.

4. Order 6 Rule 17 of the CPC provides 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.

5. The proviso to Order 6 Rule 17 provides that no application 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.

6. In the instant case, till date all the defendants have not filed their written statement. The issues have not been framed



and the trial has not commenced. Under the circumstances, if the court below, which has discretionary jurisdiction to allow either party to alter or amend his pleadings in such manner and on such terms as may be just, has found that the amendment sought for was justified, I see no reason to interfere with the order impugned, as the same is neither illegal nor perverse nor without jurisdiction.

7. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

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

