

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.583 of 2019

Bhagirath Das, Son of Gaudi Das, Resident of Village-Nipaniya, P.O.-
Salempur, P.S.- Isuapur, District- Saran.

... .. Plaintiff/petitioner

Versus

1. Dashrath Das, Son of Late Gaudi Das, Resident of Village-Nipaniya, P.O.-
Salempur, P.S.- Isuapur, District- Saran.

... .. Defendant/Respondent 1st set

2. Guru Charan Das, Son of Late Gaudi Das, Resident of Village- Nipaniya,
P.O. Salempur, P.S.- Isuapur, District- Saran.
3. Chhotelal Das, Son of Late Ganesh Das, Resident of Village- Nipaniya, P.O.
Salempur, P.S.- Isuapur, District- Saran.
4. Uma Das, Son of Late Ganesh Das, Resident of Village- Nipaniya, P.O.
Salempur, P.S.- Isuapur, District- Saran.
5. Most. Bharti Kuer, Wife of Late Daya Shankar Das, Resident of Village-
Nipaniya, P.O. Salempur, P.S.- Isuapur, District- Saran.
6. Puja Kumari, minor daughters of Late Daya Shankar Das, through Most.
Bharti Kuer mother guardian Resident of Village- Nipaniya, P.O. Salempur,
P.S.- Isuapur, District- Saran.
7. Rakhi Kumari, Minor daughters of Late Daya Shankar Das through Most.
Bharti Kuer mother guardian Resident of Village- Nipaniya, P.O. Salempur,
P.S.- Isuapur, District- Saran.
8. Radha Kumari, minor daughters of Late Daya Shankar Das through Most.
Bharti Kuer mother guardian. Resident of Village- Nipaniya, P.O. Salempur,
P.S.- Isuapur, District- Saran.
9. Hare Ram Das, Son of Late Ganesh Das, Resident of Village- Nipaniya, P.O.
Salempur, P.S.- Isuapur, District- Saran.
10. Jai Ram Das, Son of Late Ganesh Das, Resident of Village- Nipaniya, P.O.
Salempur, P.S.- Isuapur, District- Saran.
11. S. Kumar Das, Son of Late Ganesh Das, Resident of Village- Nipaniya, P.O.
Salempur, P.S.- Isuapur, District- Saran.
12. Most. Devanti Devi, Wife of Late Shankar Das. Resident of Village-
Nipaniya, P.O. Salempur, P.S.- Isuapur, District- Saran.
13. Santosh Kumar Das, Son of Late Shankar Das, Resident of Village-
Nipaniya, P.O. Salempur, P.S.- Isuapur, District- Saran.
14. Mantosh Kumar Das, Son of Late Shankar Das, Resident of Village-
Nipaniya, P.O. Salempur, P.S.- Isuapur, District- Saran.

... .. Defendants/Respondents 2nd set

Appearance :

For the Petitioner : Mr. Nagendra Rai, Advocate



For the Respondents : Mr. Navin Nikunj, Advocate
Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 18-10-2019

Heard Sri Nagendra Rai, learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 10.12.2018 passed by the learned Sub-Judge-12, Chapra in Title Suit No.100 of 2009 whereby the application filed by the plaintiff/petitioner under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') for amendment of the plaint has been rejected.

3. Learned counsel for the petitioner submitted that while passing the order impugned the court below has failed to appreciate that the basic texture of the suit would not change by the proposed amendment. It also failed to appreciate the settled law that if the plaintiff can file a separate suit against the defendant, the same can be permitted to be added/amended in the plaint also. According to him, the court below has failed to appreciate that except the defendant/respondent no.1, all other defendants were supporting the case of the petitioner.

4. The short facts of the case are that the



petitioner has filed Title Suit No.100 of 2009 against the respondents seeking declaration of his title over schedule-1 of the plaint property. His case, as set out in the plaint, in brief, is that the properties mentioned in schedule 1 to 4 of the plaint fell to the share of Gauri Das by private partition from other co-sharer raiyats after revisional survey. Gauri Das died after revisional survey leaving behind his four sons in state of jointness with them. Later on, there was a private partition amongst the four sons of Gauri Das about 30 years back. By this private partition, the properties mentioned in schedule-1 of the plaint were allotted to the share of the petitioner over which he is coming in peaceful possession since then. The properties mentioned in schedule 2, 3 and 4 of the plaint were allotted to the share of the respondent no.1 and 2 and the father of defendant no.2 and 3 respectively over which they are coming in peaceful possession. These properties include ancestral properties as well as joint family acquisitions. Since the respondents are threatening to interfere in the petitioner's possession over the properties mentioned in schedule-1 of the plaint, the necessity of filing of the suit arose.

5. The respondents 2nd set have filed written statement. They have supported the case of the petitioner.



6. The respondent no.1 has filed separate written statement and is contesting the suit. He has contended that there was a previous partition on 14.10.1967 amongst the four sons of Gauri Das and all the four sons came in separate possession of the properties allotted to their respective shares. However, the schedules given in the plaint detailing the shares of the plaintiff and his brothers have been denied. The sons of Gauri Das acquired properties from their own fund after the partition on 14.01.1967. These are separate self-acquired properties.

7. He has further contended that in the plaint schedules, such acquisitions have been dishonestly included by the petitioner. He has also pleaded that the properties mentioned in schedule-1 of the written statement are the self-acquired properties of the respondent no.1.

8. It is an admitted fact that after framing of issues the evidence in the case has been concluded. When the suit was fixed for arguments, an application was filed by the petitioner on 19.03.2018 under Order 6 Rule 17 of the CPC stating therein that due to mistake, some facts have been left to be pleaded in the plaint which are necessary to be added.

9. The application filed under Order 6 Rule 17 of the CPC by the petitioner in the court below has been brought



on record and marked as Annexure-3 to this application.

10. A perusal of the aforesaid Annexure-3 to the application would show that there is no pleading that in spite of due diligence the petitioner could not have raised the matter before the commencement of trial.

11. Order 6 Rule 17 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.

12. The proviso to Order 6 Rule 17 creates an exception to the general rule that the court may at any stage of proceeding allow either party to alter or amend his pleadings. It 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 the commencement of trial.

13. Having considered the submissions made on behalf of the parties, the court below has categorically held that the comprehensive amendment sought for by the petitioner by way of his application dated 19.03.2018 would change the



nature of the dispute. It has also held that the amendment sought for can not be allowed as the petitioner failed to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial.

14. I also find that there is absolutely no whisper in the application filed by the petitioner under Order 6 Rule 17 of the CPC that in spite of due diligence the amendments sought for could not come to his notice earlier.

15. Under the circumstances, since the order impugned is neither perverse nor without jurisdiction, I am not inclined to interfere with the same in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

16. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.10.2019
Transmission Date	NA

