

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.572 of 2019

1. Bibi Nasira Khatoon, Wife of Wasi Ahmed, Resident of Village-Chaurau, P.O.-Thawe, P.S. + District- Gopalganj.
2. Wasi Ahmed, Son of late Asgar Ali, Resident of Village-Chaurau, P.O. Thawe, P.S. + District- Gopalganj.
3. Naki Ahmed, Son of Sheikh Wasi Ahmed, Resident of Village-Chaurau, P.O. Thawe, P.S. and District- Gopalganj.
4. Shami Ahmed, Son of Sheikh Wasi Ahmed, Resident of Village-Chaurau, P.O. Thawe, P.S. + District- Gopalganj.
5. Ahmed Raja, Under Guardianship of Bibi Nasira Khatoon, Resident of Village-Chaurau, P.O. -Thawe, P.S. + District- Gopalganj.

... .. Petitioners

Versus

1. Shakil Ahmed, Son of Safi Ahmed, Resident of Village- Chaurau, P.O. Thawe, P.S. + District- Gopalganj.
2. Shamsh Parwez, Son of Safi Ahmed, Resident of Village- Chaurau, P.O. Thawe, P.S. + District- Gopalganj.
3. Safi Ahmed, Son of Sheikh Asgar Ali, Resident of Village- Chaurau, P.O. Thawe, P.S. + District- Gopalganj.
4. Nasir Ahmed @ Tuntun Mian, Son of Hasid Ahmed, Resident of Village-Dhobaliya, P.S.-Majhagarh, District- Gopalganj.
5. Butun Mian, Son of Hasid Ahmed, Resident of Village-Dhobaliya, P.S. Majhararh, District- Gopalganj.
6. Hajra Khatoon, Daughter of Hasid Ahmed, Resident of Village- Dhobaliya, P.S.-Majhagarh, District- Gopalganj.
7. Nasima Khatoon, Daughter of Hasid Ahmed, Resident of Village-Dhobaliya, P.S.- Majhagarh, District- Gopalganj.
8. Munni Khatoon @ Shayda Khatoon, Daughter of Hasid Ahmed, Resident of Village- Dhobaliya, P.S.-Majhagarh, District- Gopalganj.
9. Rukaiya Khatoon, Wife of Ahmed Hussain, Resident of Village- Ujra Narayanpur, P.O. Thawe, P.S. Uchakgaon, District- Gopalganj.

... .. Respondents

Appearance :

For the Petitioner : Mr. Ranjeet Kumar, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 27-09-2019



Heard learned counsel for the petitioners and perused the materials on record.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 28.08.2018 passed by the learned Sub Judge-11, Gopalganj in Title Suit No.369 of 2011 by which the petition dated 18.05.2018 filed by the petitioners under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') has been rejected.

3. Learned counsel appearing for the petitioners submitted that the trial court has failed to consider that the proposed amendment is necessary to resolve the real controversy. It also failed to consider that the amendment sought for would not alter the cause of action or the nature of the suit. According to him, the trial court ought to have allowed the application filed by the petitioners under Order 6 Rule 17 of the CPC in the interest of justice.

4. The facts of the case, in brief, are that the petitioners filed a title suit bearing Title Suit No.369 of 2011 for setting aside the registered sale deed dated 15.06.2011 executed by one Asiya Khatoon in favour of respondent no.1 Sakil Ahmed. Respondent nos. 1 to 5 appeared and filed their respective written statements.

5. After framing of the issues, the parties adduced their evidences. On conclusion of the trial, the case was fixed for arguments. The respondents concluded their arguments and at that



stage, an application under Order 6 Rule 17 of the CPC was filed on behalf of the petitioners for amending the prayer portion. They prayed that one more prayer be added in the relief portion i.e. for declaration of title over the suit land. The respondents filed their reply to the amendment petition.

6. Having considered the rival submissions made on behalf of the parties, vide impugned order dated 28.08.2018, the trial court rejected the amendment petition filed by the petitioner holding the same to be not maintainable in view of the provisions prescribed under Order 6 Rule 17 of the CPC, which read as under:-

“R.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.”

7. On perusal of the aforesaid provision of the CPC, it would be manifest that a discretion has been given to the court to allow either party to alter or amend his pleadings that may be necessary for the purpose of determining the real question in



controversy between the parties at any stage of the proceedings. The proviso to Order 6 Rule 17 creates an exception. The proviso states that no application for amendment shall be allowed after the trial has commenced, unless 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. Thus, an application for amendment, after the commencement of the trial, can not be allowed by the court, unless the court comes to the conclusion that in spite of due diligence the petitioners could not have raised the matter before the commencement of trial.

9. Since no proper explanation was given by the petitioners before the court as to why the issue regarding the proposed amendment could not have been raised before the commencement of trial, it has rightly dismissed the application filed by the petitioners. The order impugned does not require any interference by this Court in exercise of supervisory jurisdiction under Articles 226 and 227 of the Constitution of India.

10. The application is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.10.2019
Transmission Date	NA

