

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.562 of 2019

1. Satish Kumar Singh, aged about 75 years, male, Son of Ram Adhar Singh, Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
2. Basant Kumar Singh, aged about 50 years, male, Son of Satish Kumar Singh, Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
3. Dilip Kumar Singh, aged about 44 years, male, Son of Satish Kumar Singh, Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.

... .. Plaintiffs-Petitioners

Versus

1. Devi Kumar Singh, Son of Ram Adhar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
2. Prabhat Kumar Singh Son of Devi Kumar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
3. Shanti Kumar Singh Son of Ram Adhar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
4. Amaresh Singh, Son of Shanti Kumar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.

.....Defendants-Respondents-1st Set.

5. Ram Chandra Sharma, Son of Hardas Sharma Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
6. Namwar Sharma, Son of Bandhu Sharma Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
7. Lilawati Devi Wife of Devi Dayal Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
8. Ramanand Singh, Son of Kapildeo Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
9. Jay Prakash Singh, Son of Kapildeo Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
10. Shesh Mani Singh, Son of Kapildeo Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
11. Rajesh Kumar Ram, Son of Sachnu Ram Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
12. Lachi Devi, Wife of Paras Nath Nonia Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
13. Paras Nath Nonia, Son of Chaturi Nonia Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
14. Radhika Devi, Wife of Satyendra Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
15. Awadhesh Singh, Son of Akshyabar Singh Resident of Village-Sonhan,



Police Station-Sonhan (Bhabua), District-Kaimur.

16. Jai Shankar Singh, Son of Akshyabar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
17. Satya Bhama Devi, Wife of Shanti KuMar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
18. Sunita Kumari, Daughter of Satish Kumar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
19. Asha Devi, Daughter of Satish Kumar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
20. Kalindi Devi, Satish Kumar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
21. Sunita Devi, Wife of Late Rajesh Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
22. Pappu Singh, Minor Sons of Late rajesh Singh Under Guardianship Of their Mother Sunita Devi Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
23. Munna Singh, minor Sons of Late Rajesh Singh Under Guardianship Of their Mother Sunita Devi Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
24. Rajendra Singh, Son of Sheo Pujan Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
25. Baliram Singh, Son of Sheo Pujan Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
26. Asha Devi, Wife of Nanda Kharwar Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
27. Bishwanath Yadav, Son of Ram Rup Yadav Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
28. Bechan Singh, Son of Chhatar Singh Resident of Village-Chotka Kir, P.S.-Sohan, District-Kaimur.

...Defendants-Respondents-2nd Set.

29. Prince Kumar, Son of Basant Kumar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.
30. Saurabh Kumar Singh, Son of Basant Kumar Singh Resident of Village-Sonhan, Police Station-Sonhan (Bhabua), District-Kaimur.

... .. Plaintiffs-Respondents-3rd Set.

Appearance :

For the Petitioner : Mr. Bhanu Pratap Singh-Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

19-09-2019

Heard Mr. Bhanu Pratap Singh, learned advocate for



the plaintiffs-petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 12.03.2019 passed by the learned Subordinate Judge-VIIth, Kaimur (Bhabua) in Title Suit No.30/ 2003 R 2483/ 2014 as contained in Annexure-4, by which he has rejected the petition filed by the petitioners for amendment of the plaint under Order-6, Rule-17 of the Code of Civil Procedure (for short C.P.C.).

3. Mr. Bhanu Pratap Singh, learned counsel for the petitioners submitted that the trial Court has not considered the provisions of the C.P.C. while rejecting the application filed under Order-6, Rule-17 of the C.P.C. It failed to appreciate that pleading can be amended at any stage for the purpose of determining the real questions in controversy in between the parties. He has pleaded that the trial Court also failed to appreciate that the claim of the plaintiffs is that the sale deed dated 15.09.1962 executed in favour of defendant no.3 is a joint family property, which was acquired in exchange of land whereas the claim of the defendant no.3 is that it was self-acquired property, therefore, for the purpose of determining the real questions in controversy in between the parties, the proposed amendments are necessary.

4. Having heard the learned counsel for the petitioners and perused the materials on record, I find that the petitioners have filed the suit for partition against the defendants-respondents 1st set



before the trial Court vide Title Suit No.30 of 2003. The plaintiff no.1 and defendant nos.1 and 3 are full-brothers.

5. The defendants filed their rejoinder. After framing of issues, trial commenced and the parties adduced their evidences. At the stage of argument, an application under Order-6, Rule-17 of the C.P.C. was filed on behalf of the plaintiffs-petitioners for amendment of the plaint stating therein that in paragraph-3 of the plaint, it is stated that the properties as mentioned in Schedule-(Ka) are ancestral lands of the joint family of the plaintiffs and defendants. Some of the said properties were obtained through registered deed of exchange, but in the said paragraph the mode of exchange was not clearly explained. In fact exchange of Joint family properties were made according to convenience through registered deeds. Since the said registered deeds are already on record, the plaintiff prayed for amendment of paragraph no.3 of the plaint to that extent only as by the said amendment nature of the suit does not change as well as the defendants are also not adversely effected.

6. At the stage of arguments, an application under Order-6, Rule-17 of the C.P.C. was filed by the plaintiffs seeking several amendments on facts in paragraph-3 of the plaint.

7. The learned trial Court rejected the amendment petition filed by the plaintiffs vide order impugned dated 12.03.2019. The operative part of the order impugned reads as follows:-

“On perusal of the record it transpires that this is an



old case of the Year 2003, finding argument on behalf of the plaintiffs is going on. All the defendants have finished their final argument. Then, this amendment petition has filed particularly when the defendants have raised question and pleaded defence regarding averment mentioned in para-3 of the plaint. On perusal of averment in para-3 of the plaint it is crystal clear that the plaintiffs have stated that disputed properties mentioned in Schedule-Ka, is an ancestral as well as joint family properties and there is some exchange at the time of the ancestors of the plaintiffs. Thus there is no need of amendment to explain the same. It can't say that inspite of due diligence it couldn't detected earlier and amended accordingly. Further it can't be said that there is some typical mistake. At this stage this petition has filed to delay the proceeding of the case. Thus, the amendment sought is not in formal in nature and it may vanish admitted fact and defence. Both the parties directed to co-operate the Court for timely disposal of the case. So the petition rejected."

8. Order-6, Rule-17 of the C.P.C. 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.

9. The proviso to Order-6, Rule-17 of the C.P.C., however, creates an exception. The proviso states 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.

10. In the instant case, having perused the amendment petition filed before the Court below, which has been annexed as Annexure-2 to the application, I find that there is no reason assigned by the plaintiffs in their application stating that in spite of due diligence, they could not have raised the matter before the commencement of the trial.

11. Regard being had to the stage of the case at which the prayer for amendment was made, the non-explanation of reason as to why in spite of due diligence, the amendment sought for could not have been raised before the commencement of trial and the application for amendment having been filed only after the defendants raised questions and pleaded defence regarding averments made in the Para-3 of the plaint, if the trial Court has rejected the application filed under Order-VI, Rule-17, no illegality or perversity can be found with the order impugned.

12. In that view of the matter, I am not inclined to



interfere with the order impugned passed by the trial Court in the supervisory jurisdiction under Article 227 of the Constitution of India. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.09.2019
Transmission Date	24.09.2019

