

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.601 of 2019

1. Ramji Mehta Son of Late Sumarit Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
2. Shivji Mehta Son of Late Sumarit Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
3. Rajendra Mehta Son of Late Dip Narain Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
4. Dinesh Mehta Son of Late Upendra Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
5. Arun Mehta Son of Late Upendra Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
6. Satish Mehta Son of Late Upendra Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
7. Saryug Mehta Son of Late Rupan Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
8. Gulab Mehta Son of Late Rupan Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
9. Satto Mehta Son of Late Rupan Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
10. Surendra Mehta Son of Late Rupan Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
11. Maheswari Mehta Son of Late Rupan Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
12. Mahendra Mehta Son of Late Rupan Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
13. Bhola Mehta Son of Late Fanilal Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
14. Lal Mohar Mehta Son of Late Fanilal Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
15. Subodh Mehta Son of Late Nand Kishore Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
16. Chandan Kumar Mehta Son of Late Nand Kishore Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
17. Pintu Mehta Son of Late Bishundev Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
18. Sintu Mehta Son of Late Bishundev Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
19. Brahmdev Mehta Son of Late Basudeo Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.
20. Tunai Mehta Son of Late Rupan Mehta Resident of Hardi, Tola-Laxminia, P.S.-Supaul, District-Supaul, Pin Code-852108.



... .. Defendants/Petitioners

Versus

1. Anup Mehta Son of Late Girdhari Mehta Presently Resident of Village-Durgasthan, P.S.-Supaul, District-Supaul.
2. Mahendra Mehta Son of Late Kamal Mehta Presently Resident of Village-Durgasthan, P.S.-Supaul, District-Supaul.
3. Yogendra Mehta Son of Late Kamal Mehta Presently Resident of Village-Durgasthan, P.S.-Supaul, District-Supaul.
4. Fulendra Mehta Son of Late Kamal Mehta Presently Resident of Village-Durgasthan, P.S.-Supaul, District-Supaul.
5. Dukha Mahto Son of Late Mishrilal Mahto Resident of Hardi Tola-Laxminia, P.S. and District-Supaul.
6. Bauku Mehta Son of Late Gohal Mahto Resident of Hardi Tola-Laxminia, P.S. and District-Supaul.
7. Ramji Mehta Son of Late Gohal Mahto Resident of Hardi Tola-Laxminia, P.S. and District-Supaul.
8. Sitaram Mahto Son of Late Panchu Mahto Resident of Hardi Tola-Laxminia, P.S. and District-Supaul.
9. Ramesh Mehta Son of Late Bauni Mehta Resident of Hardi Tola-Laxminia, P.S. and District-Supaul.
10. Manoj Mehta Son of Late Bauni Mehta Resident of Hardi Tola-Laxminia, P.S. and District-Supaul.
11. Khushilal Mehta Son of Late Duhai Mehta Resident of Hardi Tola-Laxminia, P.S. and District-Supaul.
12. Kari Mehta Son of Gujai Mehta Presently resident of Ram Nagar, P.S.-Pipra, District-Supaul.
13. Satto Mehta Son of Gujai Mehta Presently resident of Ram Nagar, P.S.-Pipra, District-Supaul.

... .. Plaintiffs/Respondents

Appearance :

For the Appellant/s : Mr. Shailendra Kumar Singh, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 25-10-2019

Heard learned counsel for the defendants-petitioners.

2. This application has been filed by the defendants-petitioners challenging the order dated 19.11.2018 passed by the



learned Sub-Judge 1st, Supaul in Title Suit No. 11 of 2002 whereby he has rejected the petition filed under Order VI, Rule 17 of the Code of Civil Procedure (for short 'CPC').

3. Learned counsel appearing for the defendants-petitioners submitted that the trial court has failed to appreciate that amendment can be filed at any stage, even at the appellate stage, if foundational facts are already there. He contended that the trial court ought to have appreciated that the amendment sought for is formal in nature and, thus, allowed the same.

4. On perusal of the order impugned, I find that the plaintiffs-respondents had filed Title Suit No. 11 of 2002 in which after notice the defendants-petitioners had appeared long back. In the suit, the issues were framed and evidence on behalf of the plaintiffs-respondents was closed. After commencement of the trial, at a much belated stage, the defendants-petitioners filed an application for amendment in the written statement. The said application has been rejected vide impugned order dated 19.11.2018.

5. On perusal of the application filed on behalf of the defendants-petitioners in the court below under Order VI Rule 17 of the CPC, I find that nowhere it is pleaded that inspite of due diligence the defendants-petitioners could not have raised the



matter before the commencement of trial. It is also not pleaded that the amendments sought for are necessary for the purpose of determining the real question in controversy between the parties.

6. Order VI, Rule 17 of the CPC provides that the court may at any stage of the proceedings allow either party to alter or amend his pleading 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.

7. However, the proviso to Rule VI, Order 17 of the CPC, which is in the nature of exception, provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

8. Since the application filed on behalf of the defendants-petitioners under Order VI, Rule 17 of the CPC did not either contain the pleading that the amendments sought for were necessary for determining the real question in controversy between the parties or that inspite of due diligence, the defendants-petitioners could not have raised the matter before commencement of trial, no illegality can be found with the order impugned



whereby the application filed on behalf of the defendants-petitioners has been rejected.

9. In that view of the matter, no relief can be granted to the defendants-petitioners in supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

10. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.11.2019
Transmission Date	

