

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.860 of 2019**

1. Umesh Chandra Sharma S/o Late Deo Nandan Sharma Resident of Qt. No.12B Indira Nagar Kanke Road, Ranchi Jharkhand.
2. Bimla Kumari Sharma W/o Late Umesh Chandra Sharma Resident of Qt. No.12B Indira Nagar Kanke Road, Ranchi Jharkhand.
3. Madan Prasad Sharma S/o Late Deo Nandan Sharma R/o 101, Rajeev Apartment, P.S.- Budha Colony, Dist- Patna.

... .. Petitioners

Versus

Ramesh Chandra Sharma S/o Late Deo Nandan Sharma R/o Flat No. 5/24, Asharay Home, Apartment, Jagdeo Path, Arrah Garden Road, P.O.- B.V. College, Patna, Tapeswar Colony, Bailey Road, Patna.

... .. Respondent

Appearance :

For the Petitioners	:	Mr. Sanjay Parasmani, Advocate
For the Respondent	:	None

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

Date : 27-06-2019

The delay of three days, as pointed out by the stamp reporter for filing the application, is condoned.

2. Heard learned counsel for the petitioners.

3. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 23.01.2009 passed in Partition Suit No.504 of 2011 by the learned Sub Judge-XVI, Muzaffarpur whereby he has rejected the petition for amendment in the written statement.

4. It is submitted by the learned counsel for the petitioners that the amendments sought for are formal in nature.



They do not in any manner change the nature of the suit. The aforesaid aspect was not appreciated by the trial court and erroneously the application filed by the petitioners under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') has been rejected. It is submitted that in case the order impugned is allowed to continue, the same will seriously prejudice the case of the petitioners.

5. Having heard the petitioners and perused the materials brought on record including the order impugned, I find that the respondent is the plaintiff in Partition Suit No.504 of 2011 and the petitioners are the defendants in the said suit. After the service of summons, the petitioners appeared and filed their written statement jointly. After filing of the written statement, the plaintiff adduced his evidence. After closure of the plaintiff's evidence, an application was filed on behalf of the defendants under Order 6 Rule 17 read with Section 151 of the CPC on 09.11.2017 seeking the following amendments in the written statement:-

“(i) That on page no.4 after line no.4 of para no. 11 and before para no.12 fresh paragraphs nos. 11a, 11b, 11c and 11d be added as:

11a. That the averments made in para no. 10 to 13 are wrong and incorrect. It is wrong to say that the disputed property was acquired by



Phool Kumari Sharma through registered sale deed dated 26/06/1972 in the benami name of the Defendant no. 2, the wife of the Defendant no. 1 and her youngest son the defendant no.3.

It is submitted that the suit land was purchased by defendant no.2 Smt. Bimala Kumari Sharma out of her Stri dhan and Defendant no. 3, Dr. Madan Pd. Sharma out of his own income and both of them got constructed house thereupon out of their own income and nobody had contributed in its purchase or construction of disputed property.

11b. That it is also wrong to say that Phool Kumari Sharma during the lifetime of her husband felt that in future complication might arise owing to the reasons of the name of defendant no. 2 and 3 standing in the column of purchasers of the aforesaid sale deed dated 26/06/1972 so Phool Kumari Sharma and her husband filed a T.S. no. 168/1983 in the Court of Sub Judge-1st Muzaffarpur.

It is submitted that Phool Kumari Sharma was highly religious and spiritual lady, she used to reside in disputed premises but she was suffering from mania and feeling uncomfortable in the house because it was in her mind that the house is of her daughter-in-law so for her satisfaction the defendants agreed to transfer the land and house in her name for her lifetime only and in this manner to save heavy cost of registration-Stamp duty and other fees it was decided to transfer through Court



and thereafter the case was filed and compromised and the land and house was actually temporarily transferred in her name for her lifetime only.

11c. That later on it was also agreed upon between Dr. D.N. Sharma, his wife and present plaintiff and defendants that if the Plaintiff Ramesh Chandra Sharma will pay 1/3rd cost of the land and house at the rate of current market value then he will be entitled to get his 1/3rd share therein but the Plaintiff who is a cunning and litigant person has not paid any amount to the defendant no. 2 and 3 and filed present suit to get his suit property without paying. It is further submitted that market rate of Sch. A property at the time of filing of present suit was Rs.25000000/- (Two Crores Fifty Lacs only) which 1/3rd share comes at Rs.8333333/= so if the Plaintiff wants to get 1/3rd share in Sch. A property, he has to pay aforesaid amount to the defendant no.2 and 3.

11d. That the Sch. A & B property are self acquired property of Defendant no. 2 and 3 from which the Plaintiff or other defendants had to have got no concern, mere for satisfaction of Late Phool Kumari Sharma the property was intentionally temporary transferred to her by the Defendant no.2 and 3.

(ii) That on page no.3 after last line of para no. 12 following sentences be added:-



“That statement made in para no. 14 and 24 of the Plaintiff are wrong and incorrect. It is submitted that Plaintiff was never in possession of any room or portion out of Sch. A premises and he was never authorised by these defendants to collect rent from renters and deposit the same in their Account but he cunningly collected the rent and deposited some amount in the Account of these defendants and misappropriated heavy amount of rent but when these defendants came to know his ill intentions, they directed the renters not to pay rents to the Plaintiffs.

(iii) That para no. 13 to 18 of the W.S. be deleted.”

6. A rejoinder was filed by the plaintiff pleading that the petition for amendment in the written statement has been filed to delay the disposal of the case. After closure of the evidence of the plaintiffs, the defendants took several adjournments for evidence. However, instead of leading evidence, they filed a petition under Order 6 Rule 17 of the CPC. It was also pleaded that the proposed amendment is for withdrawal of admission made in the earlier written statement. Hence, the proposed amendment would change the entire case of the defendant made out in the earlier written statement because the said paras would be added after deleting para 13 to 18 of the written statement in which the defendants had admitted the collection of rent by the plaintiffs. On the basis of the aforesaid



pleadings, a prayer was made to reject the application preferred under Order 6 Rule 17 of the CPC.

7. Having noticed the submissions made on behalf of the parties, the trial court vide its order dated 23.01.2019 dismissed the application filed by the petitioners and directed them to adduce evidence and assist the court in speedy disposal of the case observing as under in para 5 of its order:-

“5. Thus considering the above discussions, it is apparent that the defendant no. 1 2 and 3 of this suit admitted previously in T.S. No.168 of 83 in the compromise petition that the suit property was the self acquired property in the name of Phool Kumari Sharma but vide this amendment petition, they are now proposing to bring the amendments, inconsistently that the suit property was acquired by Vimla Sharma out of stridhan and Madan Pd. Sharma out of his own income. This is the withdrawal of admission earlier made in T.S. 168/83, which is not permissible. Moreover, in this suit, issues have settled on 30-10-2015 and the plaintiff's evidence has been closed on 09-06-2017 and thereafter the suit was pending for defendant's evidence and hence it also appears that the proposed amendments are the after-thought of the petitioners. It cannot be called due



diligence because the suit was filed in the year 2011.

Considering the above discussions, the petition has no merit and thus accordingly dismissed. The defendants are directed to adduce evidence and assist the court in the speedy disposal of this case. Considering that the suit is of the years 2011.”

8. The reasons assigned by the trial court for dismissing the application of the petitioners are neither illegal nor perverse.

9. The proviso to Order 6 Rule 17 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 commencement of trial.

10. There is no dispute that in a suit of 2011, the trial had already commenced long back after the framing of the issues. The evidence on behalf of the plaintiffs was also closed. The petitioners contesting the suit could not satisfy the trial court with reason that they could not have raised the matter before commencement of trial in spite of due diligence. Furthermore, since the plaintiffs evidence has been closed, in case the proposed modifications are allowed, the same would require



examination of witnesses already examined by the plaintiffs afresh as they had no occasion to deal with the issues raised in the proposed amendment while disposing earlier. Since the suit is of the year 2011, such an exercise would further delay the disposal of the suit.

11. On the facts and in the circumstances of the case, I see no reason to interfere with the order impugned.

12. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.07.2019
Transmission Date	NA

