

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.127 of 2019**

Sh. Baidehi Sharan Dubey @ Vadehi Sharan Dubay son of Late Chandra Shekhar Dubey R/o 17, Gaon Amara Tola Vavan, Town/Village Baniya Bigha Amara, Anchal Arwal, PO and PS- Arwal, District- Jehanabad Bihar

... .. Defendant- Petitioner

Versus

1. Sh. Janki Sharan Dubey, son of Late Chandra Shekhar Dubey R/O Village Amra Tole Babhan Bigha, P.S and PO Arwal Pargana Arwal, District- Jehanabad, Bihar, Presently at R/O Village Keshari, P.S and PO- Daudnagar District Aurangabad, BiharPlaintiff-Respodent Ist set
2. Narmeshwar Dubey
3. Daya Shankar Dubey
4. Sanjeev kumar Dubey

All sons of Sh. Baidehi Sharan Dubey @ Vedehi Sharan Dubay R/o 17 Gaon Amara Tola Vavan, Town/ Village- Baniya Bigha Amara, Anchal Arwal, PO and PS-Arwal District- Jehanabad, Bihar

5. Ramayodhya Singh son of Late Raghuni Singh R/O Village Fatehpur Sanda P.S Arwal District Arwal, Bihar
6. Baleshwar Singh son of Jagdish Singh R/O Village- Fatehpur Sanda P.S Arwal District Arwal, Bihar

... .. Defendants- Respondents 2nd Set

Appearance :

For the Petitioner	:	Mr. Ashutosh Nath, Advocate Mr. Binod Kumar, Advocate
For the Respondent No.1	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Yogendra Kumar Dwivedi, Advocate Mr. Ashok Kumar Garg, Advocate Mr. R. Chandra, Advocate

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

Date : 20-02-2019

Heard Mr. Ashutosh Nath, learned counsel for the
defendant-petitioner and Mr. Ranjan Kumar Dubey, learned



counsel for the plaintiff-respondent.

2. In the present application preferred under Article 227 of the Constitution of India, the petitioner has challenged the order dated 11.10.2018 passed in Partition Suit No. 151 of 2000 by the learned Sub-Judge-I, Aurangabad, Bihar whereby he has allowed the amendment petition dated 01.11.2017 filed by the respondent 1st set wherein prayer was made to incorporate certain plots of land in Schedule-1 of the said partition suit.

3. Mr. Ashutosh Nath, learned counsel appearing for the petitioner submitted that the court below has acted with material irregularity, which also suffers from the vice of excessive jurisdiction. While allowing the amendment petition filed by the respondent 1st set, it erred to appreciate that through the said amendment petition, the respondent 1st set had deliberately incorporated set of plots among others, which were already decided and settled in Title Suit No. 19 of 1992 by virtue of compromise between the parties and one Rameshwari Devi daughter of one Jungali Dubey. It also failed to appreciate that the respondent 1st set was an intended intervenor in the said title suit, which was disposed of by a compromise decree dated 24.08.2004 and has never been challenged by anyone and as



such it has attained finality. He urged that late Jungali Dubey had executed a sada will in favour of the petitioner and died leaving behind his daughter Rameshwari Devi. In the year 1992, subsequently, the petitioner filed Title Suit No. 19 of 1992 in the court of Munsif, Jehanabad for the immovable property situated in village Amra Tola, Babhan Bigha, Fatehpur Sanda, Tejpur, Bishnupur and Dhauri, P.S. Parasi, District- Arwal against Rameshwari Devi. The said suit was disposed of through a compromise decree between the petitioner and Rameshwari Devi vide order and decree in original suit dated 24.08.2004. In the said suit, the respondent 1st set intended to be an intervenor. However, the intervention application was rejected.

4. Mr. Nath has further contended that the respondent 1st set with *mala fide* intention is trying to impliedly challenge the said compromise decree. The said amendment petition has been filed after lapse of more than seventeen years from the initiation of the suit and as such the same was hopelessly barred by limitation. The court below also failed to appreciate that the identical amendment petition under Order VI Rule 17 of the Code of Civil Procedure (for short 'C.P.C.') seeking amendment in the said Partition Suit No. 151 of 2000 for addition of identical plots was already dismissed by the



court below vide order dated 14.09.2017. He contended that in view of bar under Order XXIII Rule 3A of the C.P.C., the court below ought not to have allowed the application for amendment. In support of his submissions he has placed reliance on the decision of this Court in the case of **Balmiki Prasad Singh vs. Tarun Kumar and Ors.** since reported in **2017 (1) PLJR 42.**

5. Per contra, Mr. Ranjan Kumar Dubey, learned counsel appearing for the plaintiff-respondent 1st set submitted that the order impugned does not suffer from any illegality or irregularity. By allowing the amendment petition, the court below has simply allowed to incorporate certain plots in Schedule-1 of the plaint, which could not be mentioned due to inadvertence at the time of filing of the suit. The application filed under Order VI Rule 17 of the C.P.C by the respondent 1st set was never dismissed on merit rather the same was dismissed as not pressed vide order dated 14.09.2017. Hence, filing of the subsequent application for amendment in the plaint was not barred by any law of limitation. He contended that the law with respect to amendment in pleadings as envisaged under Order VI Rule 17 C.P.C is that all the amendments which are required for complete and effective adjudication of the dispute between the parties must be allowed. There was no reason for the court



below not to allow the amendment sought for by the respondent 1st set as the evidence on behalf of the parties had yet not commenced in spite of the suit being quite old. The amendment allowed by the court below has neither caused any injury to the petitioner nor in any way going to cause prejudice to him in future.

6. Mr. Dubey argued that the bar under Order XXIII Rule 3A of the C.P.C would only bind the parties, who had entered into compromise. Since the respondent 1st set was not a party to the compromise decree in Title Suit No.19 of 1992, reliance by the petitioner on the provisions prescribed under Order XXIII Rule 3A is misplaced.

7. I have heard learned counsel for the parties and carefully perused the record.

8. The short facts of the case are as under:-

(a) The respondent 1st set and the petitioner are brothers and sons of Late Chandra Shekhar Dubey. The respondent nos. 2 to 4 are sons of the petitioner whereas the respondent nos. 5 and 6 are the purchasers of the plots sold by the petitioner in due course.

(b) The case of the plaintiff-respondent 1st set is that the petitioner and the respondents are heirs and successors



of late Chandra Shekhar Dubey and are also the members of the joint Hindu Mitakshara Family. The petitioner is the Karta and Manager of the Schedule-1 property whereas the respondent 1st set is the co-parcener and co-sharer with other defendants.

(c) The defendant-petitioner contested the case on the ground that the suit was no more joint family property as there had already been partition and separation in 1981 effected by their father Chandrashekar Dubey in his life time.

(d) He filed the written statement to the Partition Suit No. 151 of 2000 in the year 2004 and asserted that the said partition suit is misleading and bad in the eyes of law as after partition in the year 1981 the petitioner and the respondent 1st set have been living separately.

(e) In the partition suit no.151 of 2000, the amendment petition for incorporating certain plots in Schedule-1 filed by the respondent 1st set was initially dismissed for want of prosecution. However, subsequently the same has been allowed vide impugned order dated 11.10.2018.

9. Order VI 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 purposes of determining the real questions in controversy between the parties. The proviso to Order VI Rule 17 provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. As noted above, the trial, in the instant case, has yet not commenced.

10. The Supreme Court in the case of **Rajesh Kumar vs. K.K. Modi** since reported in **2006 (4) SCC 385** elaborating the principles governing the amendment in the pleadings as envisaged under Order VI Rule 17 of the C.P.C., it ruled that all the amendments which are required for complete and effective adjudication of the dispute between the parties must be allowed.

11. In **North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das** since reported in **2008 (8) SCC 511**, the Supreme Court observed “*Amendments should be refused only where the other party cannot be placed in the same position as if the pleadings had been originally correct, but the amendment would cause him an injury which cannot be compensated in costs*”.



12. Thus, the law laid down by the Supreme Court in the aforesaid decisions, makes it clear that an application for amendment should be considered liberally for effective adjudication of dispute between the parties. If a fresh suit would be maintainable when the pleadings sought to be incorporated by way of amendment, the amendment sought for should not be refused.

13. In the case at hand, it is an admitted fact that in spite of the suit being quite old, no evidence has been led by the plaintiff - respondent Ist set till date. The objection of the petitioner regarding maintainability of the second application seeking amendment after dismissal of the first application is misconceived as the dismissal was not on merit rather it was for want of prosecution. There is no legal bar in filing the second application for amendment in case the first application is dismissed for want of prosecution.

14. Reliance placed by the petitioner on the decision of this court in **Balmiki Prasad Singh** (supra) does not help him in any manner. In the said case, this Court has simply observed that what has been prohibited under the Rule, cannot be permitted to be allowed by way of amendment. In the present case filing of second application for amendment was not



prohibited under any rule.

15. Learned counsel for the petitioner has tried to impress the court that Order XXIII Rule 3A would prohibit the respondent 1st set from challenging the compromise decree in Title Suit No. 19 of 1992. The said argument of the petitioner has to be rejected for two reasons. Firstly, because the bar under Order XXIII Rule 3A would only bind the parties, who entered into compromise. Since the plaintiff-respondent 1st set was not a party to the compromise decree, the same would not bind him from challenging the compromise decree. Secondly, because no such pleading has been advanced by the petitioner in the court below while filing the written statement. The petitioner would be debarred from arguing before this Court beyond the pleadings advanced before the court below.

16. In view of the discussions made above, I see no merit in the application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2019
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