

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.133 of 2019**

=====

Dularchand Rai S/o Late Sahdeo Rai, resident of village- Dayalpur (Senduar
Bhagwan Tola), P.O.- Dayalpur, P.S.-Janta Bazar, Distt.-Saran

... .. Plaintiff/Petitioner

Versus

1. Deo Pujan Rai S/o Late Juthan Rai
2. Shanti Kuar W/o Late Krishna Kant Singh
3. Awadh Kumar Singh S/o Late Kishna Kant Singh
4. Anand Kumar Singh S/o Late Krishna Kant Singh
5. Sushil Kumar Singh S/o Late Krishna Kant Singh
6. Subodh Kumar Singh S/o Late Krishna Kant Singh

All residents of village-Dayalpur (Bhagwan Tola), P.O.-Dayalpur, P.S.-Janta
Bazar, Distt.-Saran

7. Mukti Nath Singh S/o Late Kailash Pati Singh
8. Sunil Kumar Singh S/o Late Kailash Pati Singh
9. Jhuni Devi W/o Harendra Upadhyay D/o Late Kailash Pati Singh
10. Lutkuni Devi W/o Manoj Singh D/o Late Kailash Pati Singh
11. Bachchi Kuer W/o Late Shambhu Nath Singh
12. Nilu Devi D/o Late Shambhu Nath Singh
13. Nippu Devi D/o Late Shambhu Nath Singh

Respondents Nos. 7 to 13 are residents of village:Dayalpur (Bhagwan Tola),
P.O.-Dayalpur, P.S.-Janta Bazar, Distt.-Saran

... .. Defendants/Respondents

=====

Appearance :

For the Appellant/s : Mr.Nagendra Rai, Advocate
For the Respondent/s :

=====

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

Date : 14-02-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the



Constitution of India has been filed by the plaintiff (petitioner) to set aside the order dated 01.11.2018 passed by learned Munsif-1, Chapra in Title Suit No. 33 of 2007 whereby he has rejected the prayer of the petitioner to mark certified copy of the death register as exhibit in the suit.

3. The facts, as stated in the application, are as under :-

(a) The plaintiff has filed Title Suit No.33 of 2007 in the court of Munsif-1, Chapra against the defendants (respondents). Respondent no. 1 is defendant no. 3 in the suit. Krishna Kant Singh was defendant no. 2, who died and his heirs are respondent nos. 2 to 6. Respondent nos. 7 to 13 are heirs of original defendant no. 1 Kailash Pati Singh. The plaintiff has sought a decree for permanent injunction against the defendant no. 3 from interfering in his possession over Schedule-II land.

(b) The case of the plaintiff, in brief, is that Schedule-I plaint land was raiyati land of Bharosa Rai and Triveni Rai bearing Raiyati



Khata No. 1149 situated in village- Dayalpur (Senduar Bhagwan Tola), P.O.- Dayalpur, P.S.- Janta Bazar, District- Saran. The aforesaid raiyats had given Schedule-I land on Batai to Kuldeep Raut, Kumar Raut and others. Schedule-II plaint land stood recorded in possession of Kuldeep Raut and Kumar Raut as Sikmidars bearing Sikmi Khata No. 107. Kuldeep Raut and Kumar Raut and after them, their descendants have continued in possession as Sikmidars and the plaintiff being the sole surviving descendant of Kuldeep and Kumar Raut, is coming in possession and has acquired occupancy right over Schedule-II land. He also becomes a raiyat in terms of Section 48-D of the Bihar Tenancy Act and has title and possession as raiyat of Schedule-II land. The defendant no. 3 is claiming to have taken sale deed of Schedule-II land from original defendant nos. 1 and 2. They are making claim over the said land. Hence, the suit has been filed.



(c) The defendants have filed their written statements wherein it has been stated that Sikmidars of Sikmi Khata No. 107 surrendered their lands to the raiyats Triveni Rai and Bharosa Rai @ Ram Bharosa Rai soon after revisional survey and the raiyats resumed Khas possession. Sikmidars had or have no concern thereafter with the Schedule-II lands. Kuldeep Raut and Kumar Raut died prior to 1934. Hence, the plaintiff has no right, title or interest over the lands of Schedule-I or Schedule-II.

(d) The further case of the defendants is that defendant nos. 1 and 2, being descendants of Ram Bharosa Rai, have sold 7 Katha 12 dhurs each out of Schedule-I land to the defendant no. 3 by registered sale deeds dated 21.07.1986 and 25.07.1986 respectively for legal necessity, whereafter, the name of defendant no. 3 has been mutated over these lands and he is coming in possession as rightful owner and title holder.



The plaintiff has filed an application on 30.03.2017 in the suit wherein a prayer was made that the certified copy of the death register disclosing the fact that his ancestor Kumar Raut died on 28.04.1947 be marked as exhibit.

(e) The contention of the plaintiff in the court below was that the certified copy of the death register is a public document and also 49 years old. Earlier, the said document was not filed because it was kept in some unidentified file. However, when a search was made for the certified copy and it was located, the same is being filed before the court.

(f) A rejoinder was filed in the court below on behalf of the defendants to the application dated 30.03.2017 wherein a plea was taken that the evidence of the plaintiff is going on since 2012 and the plaintiff was also examined on 30.10.2012. Due to delaying tactics of the petitioner, the disposal of the



suit is being delayed for last five years. It is further contended in the rejoinder that the plaintiff had also filed an amendment petition under Order VI Rule 17 of the Code of Civil Procedure (for short 'CPC') on 30.09.2016 and rejoinder to the same was also filed in that petition. In the said amendment petition, the petitioner wanted to insert that Kumar Raut died on 28.04.1947 and the said petition was rejected by the court on 31.01.2017 and no challenge has been made to the said order.

(g) The contention of the defendant in the court below was that the subsequent event is nothing but an attempt to further delay the disposal of the suit as also to insert the same thing in evidence for which prayer of amendment was already rejected earlier. After hearing the parties, the court below, vide impugned order dated 01.11.2018, as contained in Annexure-5 rejected the application of the petitioner.

4. Being aggrieved by the impugned order



dated 01.11.2018, the instant application has been filed.

5. Assailing the order dated 01.11.2018, learned counsel for the petitioner submitted that order impugned is perverse. None of the grounds for rejection of the petition is tenable in law. Furthermore, the document, in question, is a public document. Having direct bearing on the issue involved, it is crucial for the ends of justice. As far as the ground that the rejection of the amendment petition has not been challenged before any superior court is concerned, the same would have no consequence as another civil misc. case has been filed against the order rejecting amendment in the plaint.

6. Having heard learned counsel for the petitioner and perused the impugned order, I find that the suit was filed in the year 2007. After framing of issues, the evidence commenced in 2012. The plaintiff-petitioner was examined on 30.10.2012. An amendment petition under Order VI Rule 17 of the CPC was filed on 30.09.2016. Rejoinder of the same was filed on 20.10.2016. The amendment sought was with respect to insertion in the pleading that Kumar Rout died on 28.04.1947. The said petition was rejected by the court below after hearing the parties on 31.01.2017. Admittedly, till filing of the instant application i.e. on 01.02.2019, the order dated 31.01.2017 had



not been challenged. Thus, the same has attained finality.

7. At this stage, I think it proper to extract Order XIII Rule 1 of the CPC hereinbelow:-

“1. Original documents to be produced at or before the settlement of issues.—(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents—

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory.”

8. Order VI, Rule 17 of the CPC gives power to the court to allow the parties to alter or modify the pleadings at any stage of proceedings if the same is necessary to determine the controversy between the parties. The proviso to the said provision states that court will not allow application of



amendment, after the trial has commenced unless the court comes to the conclusion that party could not have raised the matter before commencement of trial in spite of due diligence.

9. The proviso gives discretionary power to the court to decide on the application after commencement of the trial.

10. In the instant case, the court below has doubted the *bona fide* of the certified copy of the death register sought to be brought on record. It observed that the custody of the document, which is more than 30 years old, has not been proved to the satisfaction of the court. Regard being had to the belated stage at which the document was sought to be brought on record, the fact that the earlier application under Order VI, Rule 17 of the CPC for amendment in pleading was rejected which had attained finality as also doubt about the custody of the document in question, if the court below has rejected the prayer of the petitioner, no perversity can be found with the order impugned. The order is also not without jurisdiction. The court is not necessarily required to allow the prayer made under Order VI, Rule 17 of the CPC, if it is unjust or legally not permissible.

11. In view of the above discussions, in exercise



of supervisory jurisdiction under Article 227 of the Constitution of India, I am not inclined to interfere with the order impugned. The application is dismissed, accordingly.

kanchan/- **(Ashwani Kumar Singh, J)**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2019
Transmission Date	

