

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.453 of 2016

1. Jaleshwar Pandey Son of Late Bhrigunath Pandey
2. Most Jasoda Devi, Wife of Late Bhrigunath Pandey Both residents of Village- Masrakh Tola Nehru Tola, P.O. and P.S. Masrakh, District Saran.

... .. Petitioner/s

Versus

1. Vishwanath Singh son of Late Ram Bilas Singh
2. Pankaj Kumar Singh @ Dablu Singh Son of Vishwanath Singh Both residents of Village- P.O. and P.S. Masrakh, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Nagendra Rai
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 11-07-2019

The present writ petition has been filed for setting aside the order dated 12.08.2015 passed by the Sub-Judge-I, Chapra in Title Suit No. 261 of 2012, whereby and whereunder the petition filed by the plaintiff-petitioners herein under Order 6 Rule 17 of the Code of Civil Procedure, 1908 dated 11.06.2014, for amendment of the pleadings, has been rejected.

The brief facts of the case are that the plaintiffs-petitioners herein have filed a Title Suit bearing Title Suit No. 261 of 2012, which is pending in the learned Court of Sub-Judge-I, Chapra against the defendants-respondents and the plaintiff have sought declaration of title and recovery of possession over Schedule-Ka plaint land.

The defendants-respondents have also filed written statement and are contesting the suit. In the plaint it has been pleaded that Plot Nos. 6661, 6663 and 6665 are ancestral lands of the plaintiffs and while the Plot No. 6663 contains the house



and shop built by the father of the petitioner no. 1, Plot No. 6661 is Sahan of the house and Plot No. 6665 is used by the plaintiffs as per their requirements. It is the further case of the plaintiff-petitioners herein that east of Plot No. 6661, there is Plot No. 8147, which is belonging to the defendants and east of Plot No. 8147, Plot No. 8148 is situated, whereby there is public road. Since Plot Nos. 8147 and 8148 were lying vacant and the plaintiffs/their ancestors had no road to go to their house situated at Plot Nos. 6663 and 6661, they started using four feet wide strip in almost middle of Plot Nos. 8147 and 8148 as *Rasta* to go to the road on the eastern side. However, subsequently, the defendants/their ancestors constructed house in Plot No. 8147 and in the process encroached over south-eastern portion of Plot No. 6661. Subsequently, an oral exchange is said to have taken place in the year 1972 between the ancestors of the plaintiffs and the defendants by which a portion of Plot No. 6661 was given to the defendants'/their ancestors in lieu of portion of Plot No. 8147, however, defendants started obstructing in use of Schedule-Ka land and they put up bricks on the said land resulting in filing of the suit in question. The further case of the plaintiffs-petitioners herein is that on account of mistake it had been wrongly stated in the



plaint that Plot No. 8148 belongs to the Railways but after obtaining the R.S. map, it has transpired that Plot No. 8148 belongs to the defendants. Further there has been some mistake in depicting the disputed land and the plaintiffs want to correct the area of disputed land by extending it to strip of R.S. Plot No. 8148, connecting from the road as well.

In such view of the matter, the plaintiffs-petitioners herein had filed a petition dated 11.06.2014 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for making amendment to the aforesaid extent.

The learned counsel for the petitioners has submitted that the amendment sought to be made will not cause any prejudice to the defendants especially since the same will not change the nature of the suit. It is further submitted that the earlier petition filed by the petitioner under Order 6 Rule 17 on 17.04.2014 was not pressed since some inaccurate facts have been mentioned therein on account of typographical error. It is also contended that the amendment sought to be made will not change the physical feature of the suit land. The learned counsel for the petitioners has relied upon a judgment reported in **2017(1) PLJR 711 (Ashok Kumar Singh vs. Rajendra Singh & Ors.)**; paragraph nos. 10 to 15 whereof are reproduced herein



below:-

“10. It is evident that the specific challenge to the two sale deeds of the plaintiffs has already been made by the defendant in his written statement. By seeking to incorporate the fact regarding the sale deed dated 08.08.1973 which is subsequent to the two sale deeds of the year 1962 and 1964, the defendant wants to introduce additional ground for challenge to the two sale deeds whose validity is the crucial issue in the suit. A far more liberal approach is to be adopted while considering the amendment in the written statement as distinguished from the amendment in the plaint. The apex court in the case of Sushil Kumar Jain V.Manoj Kumar, A.I.R. 2009 S.C. 2544, has ruled as follows.

10. “....At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action...”

11. “.... It is equally well settled that in the case of an amendment of a written



statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed...”

11. Moreover, from the conspectus of the provision of Order 6 Rule 17 C.P.C. it is apparent that the emphasis is on the trial of the lis on merits and for the said purpose the amendment in the pleadings has been permitted for determining the real questions in controversy between the parties. It would be worthwhile here to note the observations of their lordships in **Rajesh Kumar Aggarwal Vs. K.K. Modi** , (2006) 4 SCC 385 in this regard as follows:

15. “....The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side...”

16. “....Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all



amendment's which are necessary for the purpose of determining the real question in controversy between the parties..."

18. "... As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed, if it is not, the amendment will be refused. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court..."(Emphasis supplied)

*12. In the context of the present controversy it would be fruitful hereto take into notice the observations of the apex court in the case of State of Maharashtra Vs. Hindustan Construction Company Limited, (2010)4 SCC 518 where their lordships have approvingly quoted the observations in the case of **Jai Jai Ram Manohar Lal Vs. National Building Material Supply, (1969)1 SCC 869** as follows:*

22. "... In Jai Jai Ram Manohar Lal this Court was concerned with a matter wherein amendment in the plaint was refused on the ground that the amendments could not take effect



retrospectively and on the date of the amendments the action was barred by the law of limitation. It was held:

“5....Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to this opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.”

13. *Their lordships have further observed:*

“7. ... The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.”

14. *Their lordships in **Hindustan Construction Company Limited** (Supra) have also noticed the observations in the case of **Clarapede & C. V. Commercial Union Assn.**, (1883) 32 WR 262 (CA) as follows:*

“.... The rule of conduct of the court in such a case is that, however, negligent or careless may have been the first omission, and, however late the



proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made...”

15. *In the context of an application for amendment under Order 6 Rule 17 C.P.C. the apex court in Prem Bakshi Vs. Dharam Dev,(2002) 2 SCC 2 have observed that it is almost inconceivable as to how mere amendment of pleadings could possibly cause failure of justice or irreparable injury to any party and accordingly a situation cannot be envisaged where amendment of pleadings, whatever be the nature of such an amendment, would even remotely cause failure of justice or irreparable loss to any party. Recently in the case of Ram Niranjana Kajaria Vs. Shiv Prakash Kajaria ,(2015) 10 SCALE 98 it has been ruled as follows:*

23. *“... Delay in itself may not be crucial on an application for amendment in a written statement, be it for introduction of a new fact or for explanation or clarification of an admission or for taking an alternate position...”*

Learned counsel for the petitioners has further relied



on a judgment reported in **(2006)4 SCC 385 (Rajesh Kumar Aggarwal & ors. vs. K.K. Modi & Ors.)**; paragraph nos. 16 to 19 whereof are reproduced herein below:-

“16. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without



deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

19. *While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”*

I have heard the learned counsel for the parties and perused the materials on record as also the aforesaid judgments rendered by this Court and the Hon’ble Apex Court. At the outset, it is relevant to state that despite valid service of notice,



the defendants-respondents have not thought it proper to appear before this Court, may be they do not find it worth to oppose the present petition. Nonetheless, upon perusal of the records, it is clear that the proposed amendment does not change the basic structure of the suit and further this Court is of the view that the proposed amendment is necessary to decide the real dispute between the parties. Hence, permitting the proposed amendment in question, would amount to doing full and complete justice to the parties and would not result in any prejudice being caused to the defendants-respondents herein, thus this Court is of the view that the proposed amendment ought to have been allowed by the learned court below.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition is allowed and the order dated 12.08.2015 passed by the learned Sub-Judge-I, Chapra in Title Suit No. 261 of 2012 is set aside.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	26.08.2019
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