

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.969 of 2016**

=====

Anil Kumar Singh son of Anirudh Prasad Singh, Resident of Village-
Hathauri, P.S.- Hathauri, District- Muzaffarpur.

... .. Plaintiff/Petitioner

Versus

1. Urmila Devi Wife of Late Upendra Prasad Sahi.
2. Ram Babu Prasad Sahi, Son of Late Upendra Prasad Sahi.
3. Smt. Neelam Devi, Daughter of Upendra Prasad Sahi. All 3 respondents are
resident of Village- Sahila Rampur, P.S.- Hathauri, District- Muzaffarpur.
4. Smt. Poonam Devi, D/o- Upendra Prasad Sahi, Wife of Jainandra Thakur,
Resident of Mohalla- Hanuman Nagar, Near Central School Aghoria Bazar,
P.O.- Ramna, P.s.- Kazi Mohammadpur, District- Muzaffarpur.
5. Smt. Nutan Devi, S/o Late Upendra Prasad Sahi, Wife of Manoj Kumar,
Resident of Mohalla- Bhadaï Niwas, Akharghat, Road, P.O.- Muzaffarpur,
P.S.- Town, District- Muzaffarpur.

... .. Defendants/Respondents

=====

Appearance :

For the Petitioner/s : Mr.Krishna Kant Singh
For the Respondent/s : Mr. V.R.P.Singh

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

03-02-2020

The present application has been filed “*for quashing of the order dated 27.06.2016 passed in Title Suit No. 30/98 by the learned court of Munsif, East Muzaffarpur whereby and whereunder the application filed on behalf of the plaintiff u/o VI Rule 17 of C.P.C. seeking amendment in the original plaint of the suit has been rejected.*”

2. Learned counsel for the plaintiff/petitioner submits that the learned court below has erred in rejecting the prayer for amendment filed on behalf of the plaintiff/petitioner on the sole



ground that such amendment had been sought at a very belated stage. In so doing, the learned court below has failed to appreciate that the nature of amendment sought would not cause any prejudice to the defendants/respondents nor change the nature of the suit and ought to have been allowed as being formal in nature.

3. Learned counsel for the plaintiff/petitioner makes a statement at the Bar on instructions that no further evidence will be required to be adduced in support of the amendment sought.

4. Learned counsel for the defendants/respondents appears and opposes the petition, submitting that the plaintiff/petitioner ought to have acted with due diligence and sought amendment before commencement of trial in terms of Order VI Rule 17 CPC.

5. Having heard learned counsel for the plaintiff/petitioner and on consideration of materials on record, this Court is of the view that the learned court below ought to have borne in mind the principles which inform the decision for grant or denial of the prayer for amendment of pleadings. While failure to seek amendment by a party at the earliest stage is no doubt a material consideration, it is not the sole consideration. The Court must weigh various factors in this regard such as



whether by allowing the amendment petition any prejudice would be caused to the other side or whether such amendment would have the effect of changing the nature of the suit. In the present case, these aspects have not been considered by the learned court below. Moreover, there is specific undertaking of the petitioner that no further evidence is required to be adduced and as such, the amendment sought would not unduly delay the trial.

6. In the above circumstances, this Court is satisfied that the amendment petition is fit to be allowed and the learned court below in not keeping the said principle in regard to amendment of the pleading, has failed to properly exercise the jurisdiction vested in it.

7. The impugned order dated 27.06.2016 is accordingly set aside and the matter remanded with a direction to the learned court below to pass a fresh order in the light of above.

8. The petition stands allowed as above.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.02.2020
Transmission Date	

