

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.307 of 2020

- 1.i Aasha Singh, wife of Late Kumar Bimal Prasad Singh, Resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada.
- 1.ii Saumitra Singh, son of Late Kumar Bimal Prasad Singh, Resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada.
- 1.iii Shambhi Sharma, daughter of Late Kumar Bimal Prasad Singh and wife of Avnish Sharma, Resident of Village- Harbanspur, P.O. and P.S.- Masauri, District- Patna at present residing in Dubai UAE but full and correct address is not known.
2. Kislay Kishore, S/o Late Sumant Kumar Singh, Resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada, Pin-805125
3. Prem Shankar Sharan Singh, S/o Late Uma Shankar Sharan Singh, Resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada, Pin-805125
4. Diwakar Prasad Singh, S/o Late Janardan Prasad Singh, Resident of Village- Rajauli, P.O. and P.S.- Rajauli, District- Nawada, Pin-805125

... .. Petitioners

Versus

1. Hare Ram Singh S/o Sri Krishna Singh @ Krishnadeo Singh, Resident of Village- Rajauli, Babhantoli, P.O. and P.S.- Rajauli, District- Nawada, Pin-805125
2. Smt. Dropati Devi, W/o Krishna Singh @ Krishnadeo Singh, Resident of Village- Rajauli, Babhantoli, P.O. and P.S.- Rajauli, District- Nawada, Pin-805125
3. Siya Ram Singh, S/o Krishna Singh @ Krishnadeo Singh, Resident of Village- Rajauli, Babhantoli, P.O. and P.S.- Rajauli, District- Nawada, Pin-805125
4. Ajit Kumar, S/o Chandra Deep Singh, Resident of Village- Debaspora, P.O.- Baghi, P.S.- Katrisarai, District- Nalanda, Pin-805115
5. Ram Pravesh singh Son of Harihar Singh, Resident of Village- Puri, P.O.- Pawapuri, P.S.- Giriyak, District- Nalanda, Pin-805115
6. Chandrika Prasad Singh, Son of Harihar Singh, Resident of Village- Puri, P.O.- Pawapuri, P.S.- Giriyak, District- Nalanda, Pin-805115
7. Balmiki Singh, Son of Harihar Singh, Resident of Village- Puri, P.O.- Pawapuri, P.S.- Giriyak, District- Nalanda, Pin-805115
8. Smt. Mani Devi, W/o Sri Bachhu Singh, Resident of Village- Puri, P.O.- Pawapuri, P.S.- Giriyak, District- Nalanda, Pin-805115
9. Rabi Devi, W/o Mudrika Singh, Resident of Village- Puri, P.O.- Pawapuri, P.S.- Giriyak, District- Nalanda, Pin-805115

... .. Respondents

Appearance :

For the Petitioners	:	Mr. R.K.P. Singh, Advocate Mr. Bal Bhushan Choudhary, Advocate Mr. Manish Kishore, Adv
For the Respondents 1 st Set:		Mr. Vibhuti Ranjan Sonvadra, Advocate
For the Respondents 2 nd Set:		Mr. Shashi Shekhar Dwivedi, Senior Advocate



Mr. Hansraj, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

8 05-07-2021 The matter has been taken up for hearing *on-line* because of COVID-19 Pandemic restrictions.

2. I.A. No. 1 of 2021 has been filed under Order XXII Rule 3 of the Code of Civil Procedure for substituting the names of heirs of petitioner No.1, who is said to have died on 02.05.2021 during the pendency of this application. Names of proposed petitioners to be substituted in place of petitioner No.1 has been given with their description in paragraph 2 of I.A. No. 1 of 2021.

3. There is no opposition on behalf of respondents to the prayer for substituting

4. The prayer for substitution is allowed.

5. Let name of petitioner No.1 be deleted from the cause title of the application and names of heirs and legal representatives as described in paragraph 2 of the application be substituted in his place.

6. I.A. No. 1 of 2021 is allowed accordingly.

7. This application under Article 227 of the Constitution of India has been filed challenging an order dated 04.12.2019 passed by learned Sub-Judge-I, Nawada, in T.S . No.



427 of 2018 (CIS 427/2018), whereby and whereunder he has rejected a petition filed by these petitioners under Order VI, Rule 17 of the Code of Civil Procedure, seeking amendment in the plaint.

8. I have heard Mr. R.K.P. Singh, learned counsel appearing on behalf of the petitioners and Mr. Shashi Shekhar Dwivedi, learned Senior Counsel assisted by Mr. Hansraj, for the contesting respondents 1st set. I have also heard Mr. Vibhuti Ranjan Sonvadra, learned counsel for the Respondents 1st set.

9. The suit has been filed by the petitioners-plaintiffs for declaration of title, confirmation of possession and for setting aside six registered deeds of sale dated 26.06.2018 and 29.06.2018 executed by the respondents 2nd Set/defendant 2nd set in the suit in favour of respondents 1st set/defendant 1st set in the suit being illegal, false, void, forged and fabricated.

10. They have also sought for an injunction, restraining the defendants from going over to the suit lands and interdicting peaceful possession of the petitioners/plaintiffs.

11. Briefly narrated, for the purpose of the present petition, the case of the petitioners is that since the defendants had created a grave situation by their acts of fraud with the strength of their might to illegally occupy the suit lands, the



petitioners, in order to protect and preserve their properties, filed the suit in 'hot-haste' for the reliefs, noted above, and in doing so there occurred certain mistakes committed by their advocate as well as the typist concerned, owing thereto certain errors crept into the plaint, which remained undetected at the time of the filing of the plaint.

12. It is asserted in the petition that the petitioners had filed an injunction petition under Order 39, Rules 1 and 2 of the Code of Civil Procedure with a prayer to issue *ad-interim* injunction against the defendants and restraining them from alienating the suit properties and interdicting the possession of the petitioners over the said property on 27.02.2019. Another petition was filed on 14.03.2019 for injunction with a prayer to restrain the defendants from executing any sale deed in respect of the suit land as also to restrain the registering authority to register such sale deeds. While directing the defendants to show cause on the said petition, the Court below had ordered the parties to maintain *status quo* and not to sale the suit property without permission of the Court.

13. The interim order dated 14.03.2019 was subsequently vacated by an order dated 30.05.2019 passed by learned Sub-Judge-7, after hearing the defendants.



14. The said order dated 30.05.2019 passed by learned Sub-Judge-7 was put to challenge before this Court in Miscellaneous Appeal No. 397 of 2019, which was allowed by an order dated 13.05.2020 by setting aside the order and directing the parties to maintain *status quo* over the suit land during the pendency of the suit.

15. This is to be further noted that against the order of this Court dated 13.05.2020, passed in M.A. No. 397 of 2019, the respondents 1st set had approached the Supreme Court by way of filing special leave petition giving rise to S.L.P. (C) No. 8280 of 2020, which was dismissed by an order dated 10.08.2020 with a direction to the trial Court to expedite the hearing of the suit and dispose of the same within a period of one year. The said order reads as under : -

“We are not inclined to interfere with the judgment of the High Court. The Special Leave Petition is, accordingly, dismissed. Pending application(s), if any, shall stand disposed of.

However, we direct the trial Court to expedite the hearing of the suit and dispose of the same within a period of one year.”

16. The petitioners, it seems, had approached the



Supreme Court by filing Miscellaneous Application No. 395 of 2021 seeking modification of the said order dated 10.08.2020 passed in S.L.P.(C) No. 8280 of 2020, which was dismissed by an order dated 12.03.2021 with following direction and observation : -

“We are not inclined to entertain this application filed for modification of the order of this Court dated 10.08.2020. The M.A. is accordingly dismissed.

However, the applicant in this M.A. is at liberty to mention before the High Court for disposal of Civil Miscellaneous No. 307 of 2020 pending before it.”

17. It is in the light of the observation of the Supreme Court in the aforesaid order dated 12.03.2021, on mention having been made for expeditious hearing and disposal of this case, this matter has been heard on priority basis, *on-line*.

18. It is stated in the application that the petitioners have preferred an appeal before this Court giving rise to M.A. No. 1 of 2019, which is pending. It also appears that questioning impartiality of learned Sub-Judge-7, Nawada, where the suit was earlier pending, the petitioners have made representations for transfer of the suit to some other Court. The suit has been



transferred and is now pending in the Court of learned Sub-Judge-I, Nawada, who has passed the order, which is impugned in the present proceeding.

19. It is not in dispute that the suit was filed in 2018 and an amendment petition was filed seeking amendment in the plaint by the petitioners on 04.04.2019. A second amendment petition was filed on 29.04.2019, which was also allowed. From the impugned order, it transpires that on 30.05.2019, the petitioners had filed an injunction petition, which was disposed of by the Court below with a direction to both the parties to the effect that the plaintiffs would adduce their evidence in next three months after settlement of issues, whereafter the defendants would adduce their evidence in next three months. Another amendment petition was filed on 10.07.2019 seeking amendment in the plaint, which was also allowed. Issues were settled on 03.08.2019, which is not in dispute. Nearly one and half months after settlement of the issues, the petitioners-plaintiffs filed a petition on 18.09.2019, seeking amendment in the plaint, which has been rejected by the impugned order.

20. From perusal of the amendment petition, which is at Annexure-2 of the present application, it transpires that one of the amendments, which the plaintiffs sought before the court



below, was for cancellation of genealogical table presented in the plaint and replacing it with a new genealogical table as annexed with the amendment petition. As the genealogical table sought to be substituted in place of original genealogical table was not there on record in the present proceeding, this Court had desired the petitioners to bring on record the same, for better appreciation of petitioners' contention. Accordingly, the genealogical table has been brought on record by way of Annexure-4 to supplementary affidavit filed on behalf of the petitioner.

21. Mr. R.K.P.Singh, learned counsel appearing on behalf of the petitioners has submitted that the amendment in the plaint is imminent as, after framing of the issues, when the trial was yet to commence by aduction of evidence, it was noticed by the plaintiffs' learned counsel that there were some serious typographical errors in the plaint, which required correction for the purpose of determining the real question in controversy between the parties and, therefore, the petition seeking amendment was filed. He has submitted that the proposed amendments will not alter the nature of the suit, most of which are formal in nature to remove clerical errors, whereas some of them are merely explanatory, which would help proper



adjudication of the suit. He has contended that the Court below has completely failed to appreciate the legislative intent of Order VI, Rule 17 of the Code of Civil Procedure, which, according to him, is in two parts. He has submitted that the expression 'may' in first part confers discretion on the Court below to allow either party to alter or amend his pleadings at any stage of proceedings in some cases. However, the expression 'shall', in the second part makes it obligatory for the Court to allow amendment when it is 'necessary for the purpose of determining the real question in controversy between the parties'. He has further submitted that the Court below has rejected the application for amendment in the plaint on erroneous considerations and has miserably failed to appreciate that even the trial had not commenced. He has contended that the Court below has rejected the amendment petition on erroneous ground that the petitioners were repeatedly filing amendment petitions one after the other, in the absence of any legal bar for filing such petitions. He has further argued that the amendments sought are fundamentally of two nature, viz., (i) removal of typographical errors and (ii) for clarification and explanation of the plaintiffs' case as already made out in the plaint. He has urged that amendment if allowed, would not have



prejudiced the defendants' case in any manner as they would have had an opportunity to respond to the same by filing written statement.

22. Having submitted that a major part of the amendment sought is explanatory and clarificatory in nature, he has relied on a Supreme Court decision in case of *State of Bihar and Others vs. Modern Tent House and Another* reported in 2017(3) PLJR (SC) 457 with reference to paragraph 8 thereof to contend that such amendments should be allowed for just adjudication of real controversy in the suit.

23. He has submitted that the Supreme Court, in case of *Madan Gopal Kanodia vs Mamraj Maniram and Others* (AIR 1976 SC 461, paragraph 26), has taken judicial note of the fact that the pleadings in the courts are loosely drafted. In order to contend that the proviso to Order VI, Rule 17 of the Code of Civil Procedure shall have no application since the trial had not commenced at the time of filing of the amendment petition as no witness was examined, he has relied on the Supreme Court's decisions in case of *Gurbakhsh Singh and Others vs. Buta Singh and Another*, reported in (2018) 6 SCC 567, *Baldev Singh and Others vs. Manohar Singh and Another*, reported in (2006) 6 SCC 498 and *Pirgonda Hongonda Patil vs. Kalgonda*



Shidgonda Patil and Others (AIR 1957 SC 363). He has also relied on the decisions of this Court in case of *Smt. Ahilya Devi and Others vs. Sri Sachindra Kishore Prasad Singh and Others*, reported in [2008(1) BBCJ V-649] and *Brij Nandan Prasad vs. Uchit Singh and Others*, reported in 2009(3) PLJR 865 to contend that the Court below failed to notice that in the facts and circumstances of the case, the amendments sought were necessary for determining the real question in controversy between the parties. He has also placed reliance on a Supreme Court decision in case of *Rajesh Kumar Aggarwal and Others vs. K.K. Modi and Others*, reported in (2006) 4 SCC 385 to contend that all amendments that are necessary for determining the real question in controversy should be allowed.

24. Mr. Shashi Shekhar Dwivedi, learned Senior Counsel appearing on behalf of the contesting respondents, on the other hand, has submitted that there is exception to the general rule of permitting the parties to amend their pleadings, which are: (i) amendment should not result into withdrawal of the admission, (ii) it should not be the purpose of delaying the trial and (iii) the amendments sought for should not be for malafide reasons. He has submitted that by seeking amendments, the plaintiffs are attempting to replace the entire



genealogical table upon which their case was based. He would contend that the petitioners cannot take plea of typographical errors in the genealogical table inasmuch as the genealogical table, as appended to the plaint, has been elaborately explained in the pleadings in the plaint. According to him, therefore, the plea that there were typographical errors in the plaint, which were sought to be removed by seeking amendment is wholly unacceptable. He has submitted that the proposed amendment in the plaint by the plaintiffs by replacing the genealogical table amounts to withdrawing the admissions in the plaint. He has urged that in the genealogical table, appended to the plaint, one Rohan Singh has been shown as the common ancestor, who had two sons Baidhyanath Singh and Modan Singh, whereas in the proposed amendments, said Baidyanath Singh and Modan Singh are being attempted to be described as brothers of said Rohan Singh.

25. He has submitted that the plaintiffs are trying to set up a new case altogether in the name of seeking amendment in the plaint. Relying on Supreme Court's decision in case of *Ajendraprasadji N. Pandey and Another vs. Swami Keshavprakeshdasji N. and Others*, reported in (2006) 12 SCC 1, he has submitted that belated amendment of plaint after



commencement of the trial without any explanation that despite due diligence the party could not have raised the matter before commencement of trial is impermissible in view of the *proviso* to Order VI, Rule 17 of the Code of Civil Procedure. He has argued that after filing of the suit, the plaintiffs sought repeated amendments in the plaint, which were allowed, and, therefore, the contention of the plaintiffs that they could not notice the lacunae in the plaint, which was loosely drafted, is not bonafide. He has further argued that the *proviso* puts a bar on allowing an application for amendment unless the Court has materials to reach a conclusion that despite due diligence, the parties could not have raised the matter before commencement of trial.

26. I have perused the plaint, which has been brought on record by way of annexure to the counter affidavit filed on behalf of respondents No. 3 and 4 and the amendment petition filed on behalf of the petitioners, which is there on record as Annexure-2 to the writ application. The proposed amendment sought for in the plaint are as under : -

“(i) *The genealogical table furnished in the Schedule I of the Plaint be cancelled and replaced by corrected genealogical table as annexed herewith this amendment petition.*

(ii) *In Para no. 2 of the Plaint at*



page no.4 in the Second line the word sons be deleted and in its place the words brothers Baidyanath Singh and Modan Singh but name of their father is not known to the plaintiffs who are descendants of fifth and sixth generations of Rohan Singh. Baidyanath Singh died long ago issueless, hence his branch became extinct be added.

IN the fourth line name “Baidyanath” be deleted and corrected as “Rohan”. Similarly at page no. 5 in Second line and eight line name “Chaman” be deleted and corrected as “Thakur”. In the ninth line the words, “alias Guddo Singh” be deleted. Similarly in the thirteenth line before name, “Gauri” “alias Tarani Prasad Singh” be added. In seventeenth line the name “Byash” be corrected as “Veyas”. In fourth line at page no. 6 the word “unmarried” be corrected as “issueless” and in the fifth line name, “alias Guddo Singh” be deleted. Similarly in seventeenth line before the word, “has” “alias Tarni Prasad Singh” be inserted.

(iii) In Para no.2 at page no. 8 in the Sixty line the last word “as” be deleted and replaced by the word “and”.

(iv) In Para no.4 of the Complaint at page no. 9 in second line name “Hari” be corrected as “Hare”.



(v) In Para No. 5 at page no. 11, of the Plaint in the second line after word “Acres” the word “only” be inserted. Similarly in seventh line name “Vyash” be corrected as “Veyas”.

(vi) After Para no. 5 two new Paras as Para no. 5 (a) and 5 (b) be added which runs as follows : -

Para No. 5 (a) : That out of entire 15.35 Acres of Village Ghasiadih standing in the name of Kanhai Singh, 2.22 Acres was acquired in 1971 for the construction of Patna Ranchi By Pass Road (N H – 31) along with another lands of Ghasia Dih standing in the different names of the members of the joint family of the plaintiffs in Jamabandi. Total 14.37 Acres land of Village Gasia Dih belonging to family of Plaintiff, inclusive of said 2.22 Acres was acquired in the said project for which total amount of compensation amounting to the Rs.1,44,221.59 was paid through Cheque to the members of Plaintiffs’ family.

Para no. 5 (b) : That after said acquisition total land of Ghasiadih standing in the name of Kanhai Singh in Jamabandi left with the family of the Plaintiffs was 13.13 Acres out of which Ganesh Shankar Vidyarthi got 5.57 Acres on partition and the balance remained joint in the family of plaintiffs



measuring 7.56 Acres only.

(vii) In Para no. 6 of the Complaint at page no. 13, in the second line the word “and” be deleted between Tilaiya (illegible) and in its place the following averments be added :-

“Ghasiadin (other than said 15.35 Acres standing in the name of Kanhai Singh)”.

Similarly in third line after Manjhlaseem the following words be added “standing in the names of different members of joint family”.

Similarly in the same Para at page no. 14 in the Tenth line after name, “Kanhai Singh” the word “either” be inserted and after word “Right” the words “(Revisional Survey) or in Jamabandi” be inserted.

(viii) After Para no. 6 two new paras as para no. 6 (a) and 6 (b) be added which runs as follows : -

Para No. 6 (a) That the Plaintiffs’ ancestor land lords settled their khas land with several persons of several Villages including Kanhai Singh one of their family members and recognized him as a Raiyat. Such settlement in his name was made in respect of lands of Village Ghasiadih, Panti, Karma Kala, Tilaiya and Manjhla Sem and put him in possession of all the settled lands



and fixed rent. Hence he became raiyat of the entire settled lands. The land lords in order to save their personal land from being vested made the same raiyati in their life time. The proprietary rights of the said land lords vested in the State of Bihar under Section 3 (I) of Bihar Land Reforms Act, 1950 by Notification dated 16.04.1953 published in Bihar Gazette on 24.04.1953. After vesting compensation Case No. 2450 of 1954-55 was registered before the Collector, Gaya in which the Additional Collector passed order on 25.10.1956 taking note of vesting of Zamindari on 24.04.1953. Thus the said landlords with details of lands, area and rent of all the settlees including the lands of Village Ghasiadih submitted the return before the Collector, Gaya including land of said Kanhai Singh, who had been coming in possession of the settled land continuously till the date of vesting, whose Raiyati right was saved under Section 4 of the said Act.

Para no. 6 (b) That on the basis of Vesting Return, Register II was prepared in the name of said settlee Kanhai Singh son of Umrao Singh of Village Rajauli and accordingly Rent Receipts were granted by the State Government in his name. Hence during Revisional Survey operation on the basis of Jamabandi R S Khariyan was



prepared in respect of lands of Village Ghasia Dih in his name under Khata No. 4 having total 18 (eighteen) plots measuring 15.35 Acres, which was finally published on 18.09.1976. It will not be out of place to mention here that before the Survey operation started Kanhai Singh had already died and hence the ancestors of the Plaintiffs allowed the Survey authorities to prepare Khatiyan in his name because they being Ex-landlords did not follow up the Survey Proceedings and their employees were not so vigilant. But they continued in possession with Kanhai Singh jointly and even after his death till final publication of the Revisional Survey Khatiyan. They also continued to pay Rent and obtained Rent Receipts in the name of deceased Kanhai Singh as their Employees did not opt for getting their names mutated in place of Kanhai Singh at least in respect of the lands of Village Ghasia Dih. It was every common in the family of Plaintiffs' ancestor to pay rent to the State of Bihar in the name of dead Jamabandi holders belonging to their joint family due to lack of vigilance and being dependent upon their employees and servants.

(ix) In Complaint Para no. 8 at page no. 15 in the eighth line before the word "name" the word "Joint" be inserted and



“name” be corrected as “Names” and name “Kanhai Singh” be deleted and replaced by the words “some of the family members of the Plaintiffs’ ancestor. Similarly in the ninth line the word “his” be deleted and corrected as “their” and the word “name” be corrected as “Names” and the word “But” be replaced by the word “Hence”.

In the tenth line after the word “was” the word “accordingly” be inserted and after the word “by” the words “them representing” be inserted. At Page no. 16 in the same Para in first line the word “through Kanhai Singh” be deleted and in the fifth line the figure, “15.67” be corrected as “15.35”. Similarly in fourteenth line of the same Para the figure “7.57 ¾” be corrected as “7.56”. In sixteenth line the word “have” be corrected as “had” and in the last “full stop” be deleted and the words “as well as Rajauli Gaya State High Way” be added.

(x) In Para no. 9 of the Complaint at page no. 17 in twelfth line the word “the” be deleted and replaced by the word “his” and thereafter “son” be corrected as “sons”.

(xi) In Para no. 12 of the Complaint at page no. 20 in seventh line the word “Singh” be deleted and the word, “lodge be corrected as “lodged”. In tenth line the word “Section” be corrected as “Sections” and in



the eleventh line the word “is” be corrected as “are”.

(xii) At Page 21 of the Complaint in Para No. 13 in the first line the word “an” be corrected as “and”.

(xiii) In para no. 14 of the Complaint at page no. 22 in ninth line after figure “31” the words, “as well as Rajauli Gaya State Highway” be added.

(xiv) At page no. 33 of the Complaint in Sub Para (xvii) after the last line the following averments be added: -

“ Kanhai Singh son of Umrao Singh and grand son of Thakur Singh was resident of Village Rajauli and not of Village Puri. Hence the Defendants 2nd set cannot connect themselves with Kanhai Singh of Rajauli nor they ever raised any claim in respect of properties standing in the name of Kanhai Singh in Jamabandi, which were disposed off by the Plaintiffs’ ancestors situated in different Villages.

(xv) At page no. 34 of the Complaint in second line of Sub Para (xviii) after the word “Singh” the words “of Rajauli” be inserted. Similarly in fourteenth line after the word “Singh” “alias Tarani Prasad Singh”, be added. IN sixteenth line the name “Vyash” be corrected as “Veyas” and at the end after deleting the “full stop” the following words



be added “Singh as one cousin Ram Narayan Singh had died before independence”.

(xvi) At page no. 40 of the Complaint in the fifth line of relief no. (i) the word “is” be corrected as “are”.”

27. It is easily discernible from the proposed amendment that the petitioners-plaintiffs do not intend only to cancel Schedule-I to the complaint, which was the genealogical table and replace it by a corrected genealogical table, they have apparently set up a new case in support of their title *vis-a-vis* the lands in question as would be evident from sub paragraph of para 5 and 6. Numerous amendments have been sought in the complaint as is evident.

28. Considering the magnitude of amendment, which the plaintiffs intend to introduce, which essentially amounts to setting up a new case in respect of title, the Court wanted to know from Mr. R.K.P. Singh, learned counsel for the petitioners as to whether the plaintiffs could invoke Clause 3 (b) of Order XXIII, Rule 1 of the Code of Civil Procedure by seeking permission to withdraw the suit with a liberty to institute a fresh suit in respect of subject matter of the suit. Mr. Singh, in response to the said query has submitted that in that case they will be losing the benefit of interim order dated 13.05.2020



passed by this Court in M.A. No. 397 of 2019.

29. Before dealing with the points taken in the application on behalf of the plaintiffs-petitioners and rival submissions made on behalf of the parties, it has to be kept in mind that this Court's power under Article 227 of the Constitution of India is to be exercised sparingly for keeping the Tribunals and the Courts within the bounds of their authority. It has been laid down by the Supreme Court in case of ***Radhey Shyam and Another vs Chhabi Nath and Others***, reported in **(2009) 5 SCC 616**, that the orders of both civil and criminal courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law, states the Supreme Court. In case of ***Shalini Shyam Shetty and Another vs Rajendra Shankar Patil***, reported in **(2010) 8 SCC 329**, the Supreme Court has elaborately laid down the principles on exercise of the High Courts' jurisdiction under Article 227 of the Constitution of India. The Supreme Court in case of ***Shalini Shyam Shetty and Another*** (supra) has reiterated the law laid down in ***Waryam Singh and Another vs Amarnath and Another*** (AIR 1954 SC 215), laying down that the High Court in exercise of its



jurisdiction of superintendence under Article 227 of the Constitution of India can interfere in order only to keep the Tribunals and Courts subordinate to it 'within the bounds of their authority'. Such power cannot be exercised at the drop of a hat by interfering with the orders of the Courts inferior to it nor can it exercise this power as a Court of appeal over the orders of the Court and the Tribunals subordinate to it. It has also laid down that in case where an alternative statutory mode of redressal has been provided, that would operate as a restraint on the exercise of this power by the High Court.

30. In the present case, I find force in submission advanced on behalf of contesting respondents that a trial is deemed to commence when the issues are settled and the case is set down for recording of evidence, as held by the Supreme Court in case of *Ajendraprasadji N. Pandey* (supra) (see paragraph 60), relying on a previous decision in case of *Kailash vs Nanhku and Others*, reported in (2005) 4 SCC 480. It is useful to note that the decision in case of *Baldev Singh* (supra), much emphasis on which has been given by Mr. R.K.P. Singh, learned counsel for the petitioners, has been referred to in case of *Ajendraprasadji N. Pandey* (supra). Admittedly, the amendment petition was filed after framing of the issues when



the parties were to depose their evidence. In such circumstance, the proviso to Order VI, Rule 17 of the Code of Civil Procedure comes into play, which makes it mandatory for a Court to come to a conclusion that in spite of due diligence, the party could not have raised the matter earlier. The nature of amendment, which the petitioners has sought for in the plaint cannot be said to be such as to make out a case that despite due diligence, they could not have sought for amendment at earlier stage.

31. In *Baldev Singh* (supra), the Supreme Court has noticed that Order VI, Rule 17 of the Code of Civil Procedure consists of two parts, first part of which states that the Court may, at any stage of proceeding, allow either parties to amend his pleadings. The second part of the said provision provides that amendment 'shall' be made for determining the real controversies raised between the parties. The submission by Mr. R.K.P. Singh, learned counsel for the petitioners that the first part is discretionary and the second part is mandatory because of the use of the words 'may' and 'shall' is not acceptable to this Court for the reason that though the said provisions can be read in two parts, its purport can be gathered only on a composite reading of the provision and not in separate compartments as submitted by him. First part enables the Court or empowers the



Court to allow either party to amend his pleadings. The expression 'such amendment' falling in the second part refers to the amendment in the first part and, read thus, the provision under Order VI, Rule 17 of the Code of Civil Procedure mandates that such amendment, as stipulated under Order VI, Rule 17 of the Code of Civil Procedure, shall be made as may be necessary for determining real controversies raised between the parties and not otherwise.

32. Further, the Supreme Court, in case of **Baldev Singh** (supra) observed that though it cannot be doubted that Order VI, Rule 17 of the Code of Civil Procedure confers upon the Court wide powers and unfettered discretion to allow a party to amend the pleadings on such terms as it appears to the Court just and proper. However, the Supreme Court observed that while dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleading if it finds that delay in disposal of suit can be avoided and that the suit can be disposed of expeditiously.

33. The decision in case of **Gurbakhsh Singh** (supra), in my opinion, is of no help for the petitioners, which arose out of a suit filed in the year 1968. In the facts and circumstances of that case, the Supreme Court allowed the



prayer for amendment. The Supreme Court, at the same time, took note of the law laid down in case of ***Abdul Rehman and Another vs. Mohd. Ruldu and Others***, reported in **(2012) 11 SCC 341**, with reference to paragraph 11 thereof, which reads as under : -

“11. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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 the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that 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. This Court, in a series of decisions has held



that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in J. Samuel & Others v. Gattu Mahesh and Others² and Rameshkumar Agarwal v. Rajmala Exports (P) Ltd and Others. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

34. It can be easily culled out from the decisions in case of **Ajendraprasadji N. Pandey** (supra), **Abdul Rehman** (supra) and **Baldev Singh** (supra) read with the clear language of Order VI, Rule 17 of the Code of Civil Procedure that amendments in the pleadings can be allowed by the Court for the purpose of determining the real controversies raised between the parties at any stage of the trial. It is noteworthy that the original provision under Order VI, Rule 17 of the Code of Civil Procedure was deleted by the Amending Act 46 of 1999 and was subsequently restored by the Amendment Act 22 of 2002 with effect from 01.07.2002, with an added *proviso* to the effect that



no application for amendment shall be allowed after trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the parties could not have raised the matter before commencement of trial. The parties, seeking amendment in the pleadings after commencement of the trial, will have thus to satisfy the two pre-requisites, namely, such amendment is necessary for determining real questions in controversy and secondly despite due diligence they could not have raised the matter before the commencement of the trial.

35. The nature of amendment, which the petitioners are seeking, have been quoted hereinabove. The petitioners had filed amendments prior to filing of the amendment petition which is subject matter of this case. In my opinion, they have not been able to make out a case that despite due diligence, the plaintiffs could not have raised the matter before commencement of trial. Further, the proposed amendment cannot be said to be just clarificatory or explanatory in nature, as has been submitted on behalf of the petitioners.

36. The Supreme Court's decision, relied on by Mr. Singh, in case of *Madan Gopal Kanodia* (supra), to contend that since complaints are loosely drafted and, therefore, amendment should be allowed, does not at all convince me for the reason



that the said decision does not deal with the scope of amendment, rather on construction of the pleadings. In case of **Madan Gopal Kanodia** (supra), the Supreme Court has observed in paragraph 26 as under : -

“26. In the written statement filed by the plaintiff under Order 6. Rule 4. CPC, the particulars and essential details of the 21 bales of cloth were clearly mentioned in paragraph 1(b) Further more, counsel for the plaintiff gave a statement before the trial Court on September 5. 1952. where also all the essential details regarding the 200 bales of cloth were given. In the statement the counsel for the plaintiff admitted that the plaintiff had received the sale proceeds of 179 bales of cloth and that 21 bales of doth remained unaccounted for. In the evidence also the plaintiff has sought to prove the very case set up in the plaint as also in the written statement filed later under orders of the Court. We are unable to see any substantial variation between the pleadings of the plaintiff and the evidence led by him at the trial. It is welt-settled that pleadings are loosely drafted in the Courts and the Courts should not scrutinize the pleading with such meticulous care so as to result in genuine claims being defeated on trivial grounds. In



our opinion, the finding of the High Court that there was wide gap between the pleadings and the proof is not at all borne out from the record of the present case.”

(Underlined for emphasis)

37. The said decision has no application in the facts and circumstances and the points involved in the present case.

38. In all fairness to the submissions made on behalf of the petitioners, I must take note of a decision of this Court in case of **Smt. Ahilya Devi** (supra). Facts have been noted in the said case in paragraph 2, from which it appears that the plaintiff in that case had pleaded in the plaint that the plaintiff and his younger brother separated in 1982 with mutual consent. An amendment was sought, however, to the effect that the figure ‘1982’ had been inadvertently typed due to mistake, which ought to have been ‘1962’. In the facts and circumstances of that case, this Court held that since the evidence had not started, amendment at that stage could not possibly cause failure of justice and irreparable loss to the respondents, though converse was possible. In that circumstance, a plea of typographical error of trivial nature for permitting an amendment in the plaint was accepted.

39. There is no gainsaying that amendment after



commencement of trial is permissible and the Court has power to exercise its discretion to permit amendment if the condition stipulated in Order VI, Rule 17 of the Code of Civil Procedure that it is necessary for the purpose of determining the real question in controversy between the parties is satisfied. Once this condition is satisfied, the Court shall have to examine applicability of the *proviso* to the said Rule. Once the first condition is satisfied that it is necessary for the purpose of determining the real question in controversy between the parties to permit amendment, the Courts may be liberal while applying proviso to Order VI, Rule 17 of the Code of Civil Procedure and construe the rule of due diligence by a party accordingly within the meaning of the said *proviso*.

40. The decision in case of ***Brij Nandan Prasad*** (supra) has no application in the facts and circumstances of the present case, which had arisen out of a suit filed prior to the amendment in Order VI, Rule 17 of the Code of Civil Procedure.

41. The Court below has taken note of the circumstance in which the amendment petition was filed and has also recorded the reason for rejection. It has specifically recorded that there was not even a whisper or any reason given



as to why the amendment petition could not be filed earlier. The said view, taken by the court below, cannot be said to be perverse or so infirm as to require this Court's interference exercising jurisdiction under Article 227 of the Constitution of India. It appears from the impugned order that the Court below was mindful of the general principles of dealing with prayer for amendment in the pleadings liberally with the purpose that the true case of the parties could be put forth to come to a just decision of a case. The Court below, however, considering the conduct of the petitioners in making repeated applications seeking amendments in the pleadings without any explanation in conformity with the proviso to Order VI, Rule 17 of the Code of Civil Procedure has rejected the application.

42. For the aforesaid reasons and considering the limited scope of this Court, exercising jurisdiction under Article 227 of the Constitution of India, in my opinion, no case for interference is made out.

43. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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