

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.892 of 2018**

1. Deo Sharan Singh S/o late Bindhyavasni Singh
2. Shiv Sharan Singh S/o Deo Sharan Singh
3. Gaurav Singh S/o Deo Sharan Singh
4. Rinki @ Omila Singh D/o Deo Sharan Singh
5. Pinki @ Anita Singh D/o Deo Sharan Singh All Residents of Village- Akhalaspur, P.S.P.O.- Bhabhua, Distt. Kaimur, Bihar.

... .. Petitioner/s

Versus

Most. Girija Devi Purported W/o late Bindhyavasni Singh R/o Village/ Akhalaspur, P.S.P.O.- Kудasan, P.S. Bhabhua, P.O. Bhabhua, Distt. Kaimur, Bihar at present residing at: Village Kудasan, P.S. Bhabhua, P.O Bhabhua, Dist. Kaimur, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashutosh Nath, Adv. Mr. Kunal Aryan, Adv. Mr. Binod Kumar
For the Respondent/s	:	Mr. J.S. Arora, Sr. Adv. Ms. Km. Shashi Bala Verma

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT**

Date : 10-11-2022

1. Petitioners are the defendants in the partition suit bearing T.S. No. 261 of 2007 filed by the respondent-plaintiff for partition of joint family property, described in Schedule-A of the plaint.

2. An amendment petition in the aforesaid suit was filed by the plaintiff on 25-01-2018 stating therein that survey *khatian* pertaining to Khata No. 143 was prepared in the name of Deo Sharan Singh, S/o Late Bindhyavasni Singh and survey *khatian* pertaining to Khata No. 219 was prepared in the name



of Bindhyavasni Prasad Singh, Deo Sharan Singh and Girija Devi, W/o Bindhyavasni Singh and the plots involved in both the Khata Nos.- 143 & 219 are the properties belonging to the joint family. The plaintiff was not having any knowledge about the aforesaid two *khatiyans* at the time of filing of the partition suit. Accordingly, the plaintiff sought to add by way of amendment Khata No. 143 having Plot Nos. 473, 2678, 2750, 2517, 2624, 2618, 2616, 2515, 423, 2630, 2514, 2752, 2521, 2620, 2622, 412, 424, 2675, 2734, 2621, 425, 2675, 2735, 2615, 2516, 419, 483, 2876, 2617, 2619, 2523, 420, 415, 472, 2512, 2746, 422, 482, 2513, 823, 39 ; Khata No. 219 having Plot No. 1004 and the areas of the aforesaid *khatiyans* in Schedule-A to the plaint, which has been allowed by the impugned order dated 16 / 04 / 2018 passed by the learned trial court with cost of Rs. 1500/- holding that addition of plots / joint family property in the partition suit shall not change the nature of the suit and for the purposes of effective adjudication of the partition suit the amendment sought by the plaintiff can be allowed even at belated stage.

3. The plaintiff-respondent filed the partition suit in question claiming herself as the legally wedded wife of Late Bindhyavasni Singh and the mother of the petitioner no.-1 /



defendant no. 1- Deo Sharan Singh. She claimed half share (1/2) in the joint family property described by her in Schedule-A of the plaint. The petitioners / defendants appeared in the suit and filed their joint written statement contending therein that the plaintiff-respondent is not the wife of Late Bindhyavasni Singh nor she was married with Late Bindhyavasni Singh. She is an imposter of Girija Devi, the real wife of Late Bindhyavasni Singh, who died on 24-06-2002. It has further been stated that respondent was the maid servant of Bindhyavasni Singh and was never married with him. The petitioners further contended that the petitioner no. -1 is not the son of the plaintiff and has not taken birth from her and the plaintiff – respondent has falsely stated this fact in the plaint that the petitioner no. 1 is her son. It has further been contended that in the family of the petitioners partition has already taken place and thereafter separate *khatian* was prepared in the name of Bindhyavasni Singh and that of the petitioner no. 1 for the land allotted to them, which they have already dealt with.

4. Learned counsel for the petitioners submits that amendment sought in the plaint is *malafide*, barred by limitation and there has been lack of due diligence on the part of the respondent in seeking amendment of the plaint after



commencement of the trial that too at a very belated stage. He further submits that the properties, which are the part of Khata Nos.- 143 & 219 is the exclusive property of the defendant no. 1 which has been obtained by him by virtue of compromise decree passed in Title Suit No. 66 / 1961 (Deo Sharan Singh -plaintiff *versus* Bindhyavasni Singh- defendant) and subsequently, record of rights has been prepared in the exclusive name of the defendant no.-1. A copy of the compromise decree passed in Title Suit No. 66 / 1961 has been exhibited as exhibit “K” & “K/1” in the suit. Learned counsel further relied upon certain documents annexed as Annexures – P4, P5 Series, P6 in order to buttress his argument that plaintiff is not the real Girija Devi, which would be evident from these unimpeachable documents. Lastly, submission is that the amendment of the plaint is not permissible at a belated stage in view of the proviso of Order-VI Rule-17 of the Code of Civil Procedure. In support of his argument he relies upon decisions of this court reported in 2011 (4) PLJR 515 Sanjay Kumar vs. The State of Bihar & Ors., 2014 (1) PLJR 48, 2015 (3) PLJR 448 Brahmanand Choudhary & Ors. vs. Smt. Narayani Devi & Anr. , 2006 (4) PLJR 260 Sayed Hasibuddin vs. Syed Md. Akram Hussain & Ors. and judgment of Hon’ble Supreme Court reported in (2009) 2 SCC



409 Vidyabai and Others *versus* Padmalatha and Another.

5. Learned senior counsel for the respondent argued that the suit in question is a partition suit in which up to the stage of preliminary decree only the question for determination remains that whether the plaintiff is entitled for partition or not and whether there is unity of title and possession over the joint family property between the parties, and if so, then for what extent, the parties have their share in the family property. The allotment of property is decided at the stage of preparation of final decree. The argument and objection taken by the petitioners before this court has also been taken in the written statement by the defendants -petitioners and on the basis of the pleadings of the parties issues were framed in the suit in which issue no. 2 is “whether the plaintiff-Girija Devi is the legally wedded wife of Bindhyavasini Singh” and issue no. 4 is “whether the plaintiff is entitled for 1/2 (one half) share in the suit property”. The parties have adduced their evidence on the said issues and if the amendment is allowed permitting the plaintiff to add certain properties, which according to the plaintiff is a joint family property, there shall be no prejudice to the petitioners. On the contrary, by allowing amendment multiplicity of the proceedings can be avoided inasmuch as in



case the suit is decreed in favour of the plaintiff/respondent, the plaintiff/respondent shall also be entitled to get a decree of partition with regard to the property subsequently added by way of amendment even by filing a fresh suit. He further submits that the amendment will not change the cause of action and nature of the suit. The amendment sought by the respondent-plaintiff is *bonafide* inasmuch as the respondent was not made a party to the compromise decree passed in T.S. No. 66 / 1961. Learned counsel relies upon the judgments reported in (2008) 5 SCC 117 Chander Kanta Bansal *versus* Rajinder Singh Anand and 2005 (4) PLJR 618 Maksoodan Khatoon & Ors. *vs.* Akhtari Begum.

6. I have heard learned counsel for the parties and perused the record. The respondent claiming herself as the wife of Late Bindhyavasni Singh and mother of the petitioner no. 1 / defendant no. 1 in the suit has filed the partition suit in question claiming her half share in the suit property described in Schedule-A of the plaint. She filed a petition for amendment in the plaint for adding the landed property involved in Khata No.- 143 & Khata No.- 219 stating that these properties are also joint family property and it was not in the knowledge of the plaintiff at the time of filing of the partition suit and as such, she wanted



to add these properties in Schedule “A” of the plaint claiming that the properties are joint family properties. In the written statement the defendants-petitioners have already contended that plaintiff-respondent is not the legally wedded wife of late Bindhyavasni Singh and further the properties involved in Khata Nos. 143 and 219 is the exclusive property of the defendant no. -1 which has been obtained by him by virtue of the compromise decree passed in T.S. No. 66 / 1961 and the defendants have led evidence also on the issues that “whether the plaintiff is the legally wedded wife of Bindhyavasini Singh” and “whether the plaintiff is entitled for one half share in the suit land”.

7. The Supreme Court, in the case of **Chander Kanta Bansal v. Rajinder Singh Anand**, reported in (2008) 5 SCC 117, has held that the liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment. The new proviso lays down that no application for amendment shall be allowed after the commencement of trial, 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. But whether a party has acted with due diligence or not would depend upon the facts and circumstances of each case. This would, to some extent, limit the scope of amendment to pleadings, but would still vest enough powers in courts to deal with the unforeseen situations whenever they arise. Therefore, it is not a complete bar nor shuts out entertaining of any later application. The reason for adding proviso is to curtail delay and expedite hearing of cases.

8. The Supreme Court has also held that due diligence has not been defined in the Code of Civil Procedure and due diligence in law means doing everything reasonable, not everything possible. It means such diligence as a prudent man would exercise in the conduct of his own affairs.

9. This High Court in a judgment reported in Maksoodan Khatoon case (Supra) allowed the amendment in the plaint at the stage of argument on the ground that such amendment would avoid multiplicity of the suit, otherwise plaintiffs will have to bring a fresh suit for title.

10. It is now settled principle of law that exercise of discretion in allowing the amendment is that multiplicity of



proceedings should be avoided. The amendment which do not totally alter the character of an action should be granted, while care should be taken that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment. In the present case while allowing the amendment the learned trial court has come to the categorical conclusion that the present amendment shall not change the nature of the suit and / or the cause of action and it is necessary to allow the amendment in order to adjudicate the suit effectively and completely. By addition of certain plots in the suit for partition definitely it shall not prejudice the defendants and by allowing the amendment multiplicity of proceedings can also be avoided. The judgments relied upon by the petitioners are not applicable in the facts of the case. Accordingly, in order to advance the cause of justice and for complete adjudication of the issues involved in the suit, in my opinion, amendment to the extent of adding certain plots in the partition suit can be allowed.

11. In the aforesaid facts and circumstances, I do not find any illegality and / or jurisdictional error in the impugned order dated 16.04.2018 passed in T.S. No. 261 of 2007 passed by learned Sub Judge II, Kaimur, Bhabhua. Accordingly, this



application is dismissed. However, the petitioners- defendants, if
so advised, may file their additional written statement as
permitted by the trial court in the impugned order.

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	11-10-2022
Uploading Date	10-11-2022
Transmission Date	NA

