

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.91 of 2022

1. Bharat Rai S/o Late Bigu Rai, Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
2. Geeta Rai, Widow of Late Jagdhar Rai @ Jagar Nath Rai, Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
3. Vikas Kumar Rai, S/o Late Jagdhar Rai @ Jagar Nath Rai, Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
4. Puja Kumari, D/o Late Jagdhar Rai @ Jagar Nath Rai, Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
5. Tetari Devi, D/o Late Dhanuk Rai and Wife of Raghunath Rai, Resident of Village Jahanpur, P.O. - Kakariya, P.S. - Jalalpur, District - Saran.
6. Rajmati Devi, D/o Late Dhenuk Rai, Wife of Sri Bhagwan Rai, Resident of Village Narainpur, P.S. Garkha, District - Saran.
7. Lakshman Prasad Yadav, S/o Jaglal Rai, Resident of Village, P.O. and P.S. - Marhaura, District - Saran.

... .. Petitioner/s

Versus

1. Bhajan Rai @ Bhagan Rai Son of Late Prabhu Rai Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
2. Mahesh Rai, Son of Late Prabhu Rai, Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
3. Ramesh Rai, Son of Late Prabhu Rai Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
4. Nand Lal Rai, Son of Late Prabhu Rai, Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
5. Manglawati Devi, D/o Late Prabhu Rai and Wife of Krishna Rai, Resident of Village Masaha, P.O. and P.S. Marhaura, District - Saran.
6. Shanti Devi, D/o Late Prabhu Rai and Wife of Jitendra Rai, Resident of Village Jagdishpur, P.O. and P.S. - Nagra, District - Saran.
7. Manju Kuar, Widow of Late Jagat Rai, Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.
8. Raju Rai, Son of Late Jagat Rai,

Garkha, District - Saran.

15. Khusi Kumari, D/o Late Jagat Rai, through Manju Kuar mother guardian, Resident of Village Pirauna Chainpur, P.O. - Paharpur, P.S. - Garkha, District - Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nagendra Rai,
Mr. Navin Nikunj
Mr. Koshalendra Rai, Advocates.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 20-06-2022 Heard Mr. Nagendra Rai, learned counsel for the petitioners.

Petitioners are aggrieved by order dated 29.11.2021 passed by learned Additional Sessions Judge-V, Saran at Chapra in Title Appeal No. 104/2015 whereby amendment petition at the appellate stage filed by the petitioners under Order 6 Rule 17 read with Section 151 of the CPC has been dismissed on the ground that the jurisdictional fact regarding due diligence has not been pleaded in the amendment petition and further the amendment cannot be allowed after commencement of trial in view of the Proviso of Order 6 Rule 17.

The court below has further come to the conclusion that the amendment sought in the relief portion will prejudice the respondents which could not be compensated.

After having gone through the order impugned and



the fact, it appears that the amendment of the relief has been sought for by the appellant at the appellate stage and in the amendment application, the appellant has not pleaded that despite due diligence, the party could not raise the matter before the commencement of the trial.

In the case of *Pandit Malhari Mahale v. Monika Pandit Mahale & Ors* reported in *(2020) 11 SCC 549*, the Hon'ble Supreme Court has held that a court has to return the finding that it is satisfied that in spite of due diligence, the party could not raise the matter before the commencement of the trial. And in absence of finding of due diligence, the amendment petition ought not have been allowed.

In the present matter, the court below has rejected the application for amendment on the ground that the jurisdictional fact of due diligence has not been pleaded and the amendment cannot be allowed after commencement of trial in view of the Proviso of Order 6 Rule 17.

Accordingly, I find no defect in the impugned order. The same is, hereby, dismissed.

(Anil Kumar Sinha, J)

perwez

U			
---	--	--	--

