

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.46 of 2018**

1. Maheshwar Narayan Shukla
2. Brajeshwar Narayan Shukla,
3. Radheshwar Narayan Shukla,
4. Rameshwar Narayan Shukla,

All sons of Shankar Narayan Shukla, Residents of Narharpur Barai, Police Station- Basantpur, Post Office- Kishunpur, District- Siwan.

... .. Petitioner/s

Versus

Ajab Narayan Singh, Son of Late Mukhlal Singh, Residents of Narharpur Barai, Police Station- Basantpur, Post Office- Kishunpur, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J. S. Arora, Senior Advocate Mr. Manoj Kumar
For the Respondent/s	:	Mr. Ram Chandra Sahani

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
ORAL

Date : 02-08-2022

Heard Mr. J. S. Arora, learned Senior Counsel appearing on behalf of the petitioners and Mr. Ram Chandra Sahani, learned Counsel appearing on behalf of the respondent.

2. The petitioners are the plaintiffs-appellants before the learned lower Appellate Court. They are aggrieved by order, dated 22.11.2017, passed in Title Appeal No. 47 of 2016, by learned 5th Additional District Judge, Siwan, by which the amendment petition filed by the petitioners at the appellate stage has been rejected.



3. The petitioners-plaintiffs filed Title Suit No. 268 of 2013 for declaration of title and confirmation of possession on the fact that they have acquired title and possession over the suit land by virtue of succession. However, the occasion for filing the suit was that the respondent-defendant was disturbing the title of the petitioners-plaintiffs over the suit land on the basis of mortgage deed, dated 27.02.1973, executed by the father of the petitioners-plaintiffs in favour of the father of the respondent-defendant. Accordingly, the respondent-defendant claims title and possession over the suit land on the basis of mortgage deed and also on the basis of adverse possession.

4. The suit land is situated in village Narharpur, Pargana Barai, Police Station Basantpur, in the district of Siwan, having khata no. 106, khesra no. 238, ad-measuring 06 kathas 14 dhurs. The suit has been dismissed by the judgment and decree, dated 07.05.2016.

5. The petitioners-plaintiffs preferred Title Appeal No. 47 of 2016 before the learned Appellate Court, in which an application has been filed for amendment of the plaint to the extent that the petitioners-appellants wanted to add a prayer that if the plaintiffs-appellants are found dispossessed from the suit land, their possession may be restored by the process of court and the



plaintiffs-appellants also wanted to file ad volerum court fee in view of the aforesaid prayer.

6. The learned lower Appellate Court has rejected the petition for amendment of the plaint on the ground that the fact regarding due diligence has not been stated in the petition for amendment and the plaintiffs-appellants had occasion to amend the prayer in the suit itself, but the same was not amended. As such, in view of the proviso to Order VI Rule 17 of the C.P.C., the amendment of the plaint at the appellate stage cannot be allowed.

7. Learned Senior Counsel for the petitioners-appellants submits that it is the consistent case of the petitioners-plaintiffs that the plaintiffs are in possession over the suit land and the plea of the respondent-defendant that he came in possession over the suit land by virtue of mortgage deed and his possession has been denied by Issue No. 8, framed in the suit. The respondent-defendant did not prefer any cross appeal against the said finding of the learned Trial Court. Accordingly, the submission is that in order to advance the cause of justice and for granting effective relief to the petitioners-plaintiffs, if they are found to be dispossessed, the learned lower Appellate Court ought to have allowed the amendment petition. He further submits that the amendment sought by the petitioners-plaintiffs would not change



the nature of the suit and shall not prejudice the respondent-defendant in any manner.

8. On the other hand, learned Counsel for the respondent-defendant submits that after amendment of Order VI Rule 17 of the C.P.C., in the year 2002, a proviso has been added and the learned lower Appellate Court has rightly rejected the prayer for amendment sought by the petitioners-plaintiffs on the ground that the petitioners-plaintiffs have not disclosed the jurisdictional facts regarding due diligence.

9. I have heard learned Counsel for the parties concerned and perused the materials available on record, including the impugned order. I find that the petitioners-plaintiffs have filed the suit for declaration of title and confirmation of possession. The suit was decided against the petitioners-plaintiffs. However, aggrieved by the dismissal of the suit, the petitioners-plaintiffs have filed Title Appeal No. 47 of 2016, which is still pending. The plea of adverse possession of the respondent-defendant has been rejected by the learned Trial Court. Admittedly, no cross appeal has been preferred against that finding of the learned Trial Court by the respondent-defendant.

10. 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.

11. In view of the aforesaid discussion, based upon the facts, in my opinion, the amendment sought by the petitioners-plaintiffs shall not prejudice the case of the respondent-defendant and shall advance the cause of justice.



12. In the result, this application is allowed and the impugned order, dated 22.11.2017, passed in Title Appeal No. 47 of 2016, by learned 5th Additional District Judge, Siwan, is hereby set aside. The amendment sought by the petitioners-plaintiffs is allowed.

13. However, there shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03-08-2022
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