

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.827 of 2019

Vinod Rai @ Vinod Ray S/o Late Vipat Rai, R/o Village-and P.O. Tikulia,
P.S.-Adapur, District-East Champaran.

... .. Petitioner/s

Versus

1. Ram Darash Rai Son of Late Kawal Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
2. Rishideo Rai Son of Late Kawal Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
3. Devendra Rai Son of Late Yogi Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
4. Baleshwar Rai Son of Late Yogi Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
5. Krishna Rai Son of Late Rajendra Rai R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
6. Dinesh Rai Son of Late Rajendra Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
7. Kameshwar Rai Son of Late Ramdarash Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
8. Ohm Prakash Rai Son of Late Ramdarash Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
9. Ashok Rai Son of Rishideo Rao R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
10. Jai Prakash Rai Son of Rishideo Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
11. Most. Giraja Kuwar, W/o Late Vipat Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
12. Ramnath Rai Son of Late Vipat Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
13. Rajesh Rai Son of Late Vipat Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.
14. Mithilesh Rai Son of Late Vipat Rai, R/o Village and P.O.-Tikuliya, P.S.-Adapur, District-East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Singh, Advocate Ms. Vagisha Pragya Vacaknavi, Advocate
For the Respondent/s	:	Mr. Samir Kumar, Advocate Mr. Chandra Kant, Advocate Mr. Alok Ranjan, Advocate Mr. Navin Kumar, Advocate



**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

6 25-08-2022 I have already heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

Vide order dated 16.03.2019, the Additional District and Sessions Judge-13, East Champaran, Motihari has rejected the petition filed on behalf of the appellants under Order VI, Rule 17 read with section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') in Title Appeal No. 55 of 2017.

At the appellate stage, the appellant/plaintiff, who is petitioner here, wanted to amend his plaint stating that in the 10th line of paragraph 3 of his plaint, due to typographical mistake, the phrase 'through purchase' has been typed instead of the word 'through share'. Similarly, in 2nd line of paragraph 4 of the plaint, the word 'through purchase' has been typed in place of 'through share'. It has been mentioned further that in paragraph 7 of the plaint, it has specifically been mentioned that the entire area of the disputed plot was 15 kattha amongst which 10 kattha was purchased land and 5 kattha was of the share of the plaintiff.

The learned counsel for the petitioner has submitted that he has already stated in paragraph 7 of the plaint that the entire area of that plot is 15 kattha amongst which 10 kattha was purchased land and 5 kattha was of the share of the plaintiff. He



has submitted further that if the amendment is allowed, the nature of suit is not changed. The learned counsel for the petitioner has also submitted that the party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of the Procedure. In support of his submission, he relied upon a decision reported in *AIR 2019 (2) SC 1186, Varun Pahwa v. Mrs. Renu Chaudhary*. The relevant portion of paragraph 9 of the decision is extracted herein below:-

“9..... Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.”

In reply, the learned counsel for the respondents has submitted that it is true that the main purpose of insertion of Order



VI, Rule 17 in the Code is for determining the real questions in controversy between the parties, but a proviso was added in that section, vide Code of Civil Procedure (Amendment) Act, 2002 whereby a provision was made that no amendment shall be 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. He has submitted that the word 'shall' mentioned in the proviso shows its mandatory nature. He has submitted that during entire trial, the petitioner did not raise this issue and the judgment was pronounced. For the first time, at the appellate stage, this point was raised. In support of his submission, the learned counsel for the respondents has relied upon a decision reported in (2006) 12 SCC 1, *Ajendraprasadji N. Pandey and another Vs. Swami Keshavprakeshdasji N. and other*. Paragraph 43 and 55 of that decision are being quoted below:-

“43. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The



amended Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (sic Rule 17), as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the Amendment Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognizing the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the rule. The details furnished below will go to show as to how the facts of the present case show that the matters which are sought to be raised by way of amendment by the appellants were well within their knowledge on their court case, and manifests the absence of due diligence on the part of the appellants disentitling them to relief.

55. We have carefully perused the pleadings and grounds which are raised in the amendment application preferred by the appellants at Ex. 95. No facts are



pleaded nor any grounds are raised in the amendment application to even remotely contend that despite exercise of due diligence these matters could not be raised by the appellants. Under these circumstances, the case is covered by proviso to Rule 17 of Order 6 and, therefore, the relief deserves to be denied. The grant of amendment at this belated stage when deposition and evidence of three witnesses is already over as well as the documentary evidence is already tendered, coupled with the fact that the appellants' application at Exh. 64 praying for recasting of the issues having been denied and the said order never having been challenged by the appellants, the grant of the present amendment as sought for at this stage of the proceedings would cause serious prejudice to the contesting respondents original plaintiffs and hence it is in the interest of justice that the amendment sought for be denied and the petition be dismissed.”

The learned counsel for the respondents has submitted that the above-mentioned error in the plaint cannot be said to be a typographical error. He relied upon a decision reported in (2012) 2 SCC 300, *J. Samuel and others vs. Gattu Mahesh and others*. Paragraph 21 and 22 of that decision are being quoted



below:-

“21. In the given facts, there is a clear lack of 'due diligence' and the mistake committed certainly does not come within the preview of a typographical error. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.

22. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences



cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip.”

The above-mentioned decision was followed by the decision of this Court reported in *2014 (3) PLJR 680, Mr. Baijya Nath Sah vs. The Govt. of Bihar through the District Collector Saharsa & others.*

The petition under Order VI Rule 17 of the Code was filed at inordinate belated stage, i.e. at the first appellate stage. After amendment in Order VI Rule 17 of the Code in the year 2002, no amendment is permissible after commencement of the trial, unless it is proved that in spite of due diligence, the party could have raised the matter before the commencement of the trial. It has been settled principle of law that after framing of the charges, the trial commences. In this case, the issues were framed. The evidences of the parties were concluded. The parties were heard at length. Thereafter, the judgment and decree was delivered by the trial court. The petitioner, being aggrieved by the judgment and decree of the trial court, preferred an appeal before the first appellate court and at the stage of first appeal, this amendment was



sought, it cannot be said that in spite of due diligence, the petitioner/appellant could not raise the matter before the learned court below.

Considering the above-mentioned facts and circumstances, I do not see any reason to interfere with the impugned order.

Accordingly, this civil miscellaneous petition is dismissed.

(Nawneet Kumar Pandey, J)

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