

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.420 of 2018

Mangal Prasad @ Mangal Rai son of Ram Balak Rai, resident of Village-
Sonwaliya Korar, P.O.- Rajpatti, P.S.- Baikunthpur, District- Gopalganj.

... .. Petitioner/s

Versus

1. Sunil Kumar Dwivedi
2. Anil Kumar Dwivedi.
3. Sanjay Kumar Dwivedi.
1-3 are sons of Bhagwati Sharan Dwivedi, resident of Village- Sonwalia,
P.O.- Rajpatti, P.S.- Baikunthpur, District- Gopalganj.
4. Mohan Prasad, son of Ram Balak Rai.
5. Laljhari Devi, wife of Late Doman Baitha.
6. Bhola Baitha, Son of Late Doman Baitha.
7. Tilak Baitha, Son of Late Doman Baitha.
8. Chhathiya, Daughter of Doman Baitha
9. Kalwatiya, Daughter of Doman Baitha
10. Lalwatiya, Daughter of Doman Baitha.
11. Jagmato Kuwar, widow of Late Bipat Mistri.
12. Dilawati Devi, Daughter of Late Bipat Mistry
13. Leelawati Devi, Daughter of Late Bipat Mistry
14. Urmila Devi, D/o Late Rajendra Baitha
15. Sarla Kumari, D/o Late Rajendra Baitha
16. Neelam Kumari, D/o Late Rajendra Baitha.
17. Kundan Baitha, son of Late Rajendra Baitha
18. Ramun Baitha, son of Late Rajendra Baitha
19. Ambika Mistri, S/o Bipat Mistri
20. Asha Devi, W/o Dasai Rai
21. Ramayan Baitha, son of Chaturgun Baitha
22. Prayag Baitha, son of Chaturgun Baitha
23. Prabhunath Baitha, son of Chaturgun Baitha
24. Dudhnath Baitha, son of Chaturgun Baitha,
4-24 are resident of Village- Sonwalia Korar, P.O.- Rajpatti, P.S.-
Baikunthpur, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Naresh Chandra Verma
For the Respondent/s	:	Mr. Jyotindra Pratap Singh
		Mr. Dhananjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA



ORAL ORDER

5 23-08-2022 Heard learned Counsel for the parties concerned.

The petitioner is aggrieved by order, dated 18.01.2018, passed, in Title Suit No. 297 of 1997, by learned Sub Judge-VI, Gopalganj, by which the amendment to the plaint has been allowed by the learned Court below after coming to the conclusion that the amendment is simple in nature and shall not change the nature of the suit.

Learned Counsel for the petitioner, while assailing the impugned order, submits that the petitioner is changing the statement made in the plaint inasmuch as in the plaint, respondents-plaintiffs have stated that a sum of Rs. 6,000/- was paid to the petitioner-defendant, but by way of amendment, now they are trying to bring new fact that earlier Rs. 1500/- was paid and subsequently Rs. 4500/- was paid. He further submits that the plaintiffs have also sought amendment on the ground of typographical error, which is not permissible after a delay of so many years inasmuch as the suit was filed in the year 1997.

In support of his argument, learned Counsel for the petitioner has placed reliance on a decision of the Supreme Court, in the case of **J. Samuel and Others v. Gattu Mahesh and Others**, reported in **(2012) 2 SCC 300** (paragraph 16). He has also placed reliance on a decision of the Supreme Court in



the case of **Chander Kanta Bansal v. Rajinder Singh Anand**, reported in **(2008) 5 SCC 117**, on the point of due diligence and proviso to Order VI Rule 17 of the C.P.C., brought by way of amendment in the year 2002.

On the other hand, learned Counsel for the respondents-plaintiffs submits that the amendment is simple in nature and shall not change the nature of the suit. He further submits that insofar as the contention of learned Counsel for the petitioner-defendant that the plaintiffs are changing their stand regarding payment of Rs. 6,000/- is concerned, the respondents-plaintiffs are not changing their stand and by way of amendment, the plaintiffs are only clarifying the payments made in two instalments, admitting that a sum of Rs. 6,000/- was paid by the plaintiffs to the defendant-petitioner. He next submits that the decisions, relied upon by the petitioner, are not applicable in the facts of the present case.

I have heard learned Counsel for the parties and have gone through the materials available on record, including the impugned order.

It appears that the amendment is simple and explanatory in nature and certain amendments due to typographical error has been sought by the plaintiffs. The



decision, relied upon by the petitioner, in the case of **J. Samuel** (supra) has no application in the facts of the present case.

The Supreme Court, in the case of **Chander Kanta Bansal** (supra), 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.



The suit was admittedly filed in the year 1997 and the proviso by way of amendment in Order VI Rule 17 of the C.P.C. was brought in the year 2002 and the Supreme Court, in paragraph 14 of **Sumesh Singh v. Phoolan Devi and Others**, reported in **(2009) 12 SCC 689**, has held as follows:-

“14. By reason of Section 16(2)(b) of the Code of Civil Procedure (Amendment) Act, 2002, the amendments carried out therein shall only apply to in respect of the suits which were filed thereafter. (See *State Bank of Hyderabad v. Town Municipal Council* [(2007) 1 SCC 765] .) As the suit had been filed in the year 1999, the proviso appended to Order 6 Rule 17 shall not apply.”

I have perused the amendment in the plaint sought by the plaintiffs, which is simple and explanatory in nature and the same will not change the nature of the suit. No prejudice of irremediable nature shall cause to the defendant.

Accordingly, in order to advance the cause of justice, I do not find any reason to interfere with the impugned order.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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