

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.899 of 2018**

---

Shankar Choudhary @ Shankar Kumar Choudhary, Son of Late Satya Narayan Choudhari, Resident of Mushkipur, Pargana- Farkiya, P.S.- Gogri, District- Khagaria, At present Residing at Purani Jail Marrooff Ganj, Ward No. 22, Shanti Satya Narayan Bhawan, Saharsa, Bihar- 852201

... .. Petitioner

Versus

1. Jasso Miyan S/o Mohammad Miyan, Resident of Mushkipur, P.S.-Gogri, Pargana-Farkiya, District-Khagaria.
2. Jasimuddin S/o Bazeer Nadaf, Residents of Mushkipur, P.S. Gogri, Pargana-Farkiya, District- Khagria.
3. Smt. Shanti Devi, Widow of late Satya Narayan Choudhary
4. Smt. Shashi Prabha Devi, Widow of late Satya Narayan Choudhary
5. Chandan Choudhary, S/o Late Satya Narayan Choudhary
6. Gauri Kumar Choudhary, D/o Late Satya Narayan Choudhary
7. Shyam Kumar Choudhary S/o Late Surya Narayan Choudhary
8. Ganesh Kumar @ Gunjesh Kumar, S/o Late Surya Narayan Choudhary, Resident of Mushkipur, Pargana-Farkiya, P.S.-Gogri, District-Khagaria, At present resident of Village and P.O. and P.S.-Sonbarsa Raj, Ward No. -12, Saharsa.
9. Amit Kumar Jaiswal, S/o Late Surya Narayan Choudhary, resident of Mushkipur, Pargana-Farkiya, P.S.-Gogri, District-Khagaria, at present resident of Village and P.O. and P.S.-Sonbarsa Raj, Ward No. -12, Saharsa.
10. Ravi Ranjan Kumar S/o late Surya Narayan Choudhary, resident of Mushkipur, Pargana-Farkiya, P.S.-Gogri, District-Khagaria, at present resident of Village and P.O. and P.S.-Sonbarsa Raj, Ward No. -12, Saharsa.
11. Seema Devi @ Sima Devi W/o Nirmal Choudhary, D/o Late Surya Narayan Choudhary, resident of Mushkipur, Pargana-Farkiya, P.S.-Gogri, District-Khagaria, at present resident of Village and P.O. and P.S.-Sonbarsa Raj, Ward No. -12, Saharsa.
12. Renu Devi @ Renu Kumari W/o Sunil Kumar Verma, D/o Late Surya Narayan Choudhary, resident of village Mushkipur, Pargana-Farakia, P.S.-Gogri, District-Khagaria, at present resident of Village-Pansalava, Dumri, Ward no. 10, P.O. and P.S.-Dumri, District-Khagaria.



13. Rinku Kumari Chaudhary, W/o Sanjiv Kr. Jaiswal @ Sanjiv Chaudhary, resident of Mushkipur, Pargana-Farkiya, P.S.-Gogri, District-Khagaria, at present resident of Village-Usari, Ward No. 3, P.O. and P.S.-Gogri, District-Khagaria.

... .. Respondents

---

---

**Appearance :**

For the Petitioner/s : Mr. Abhishek Anand, Advocate  
Ms. Sarita Bajaj, Advocate  
For the Respondent/s : Mr. Abdul Manman Khan, Advocate  
Mr. Binay Kumar, Advocate

---

---

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA  
CAV JUDGMENT**

**Date : 27-07-2023**

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed for setting aside the order dated 12.10.2017 passed by the learned Munsif, Gogri, District- Khagaria in Title Suit No. 01 of 2008 whereby and whereunder the learned Court below was pleased to allow the petition filed by the plaintiffs-respondents under Order VI Rule 17 C.P.C. for amendment in the plaint.

3. Respondent Nos. 1 and 2 are plaintiffs who have filed the suit being Title Suit No. 01 of 2008 for declaration that defendants did not acquire any right, title, interest and possession by the order dated 29.03.1996 passed by learned S.D.M. Gogri in a proceeding under Section 145 Cr. P.C. in Case No. 1165M/84 and also to restrain permanently the defendants to make any interference in anyway with respect to



the property of Imambara mentioned in Schedule I of the plaint.

4. The case of plaintiff / respondents Nos. 1 and 2 is that suit land plot No. 564 and 565 which are adjacent plots were recorded in the name of Most. Jhunia which was succeeded by her daughter Purni and maternal grandson Mishri Sahni and they were in possession over the suit land who subsequently mortgaged their 1 Katha 11 Dhur land of said plots to father and uncle of defendants vide registered mortgage deed dated 22.10.1947 and they were utilizing the mortgaged property till 15.11.1949 when the mortgage was redeemed. Thereafter, Purni died and entire property inherited by her son Mishri Sahni. Subsequently, Mishri Sahni by registered deed of gift dated 10.10.1955 transferred his 5 Dhur of land of plot No. 564 and 565 in favour of Imambara and left the village as such Imambara (also known as Mir Khanna Akhara) came in physical possession over 1 Katha 15 Dhur land of plot No. 564 and 565.

5. The proceeding initiated under Section 144 Cr.P.C. in year 1984 before S.D.M. Khagaria was converted into Section 145 Cr.P.C. in which plaintiff was second party and vide order dated 29.03.1996 the S.D.M., Gogri declared possession of the petitioner over the disputed land. The Revision Petition against the said order was dismissed on 15.05.2003 by 3<sup>rd</sup>



Additional Judge, Khagaria and the Cr. Misc. No. 19475/2003 before this Court was also dismissed with liberty to file the suit in accordance with law vide order dated 14.11.2005.

6. The Case of defendants / petitioner is that Most. Jhunia died leaving behind no legal heirs and after her death the land recorded in her name which was came into physical possession of ex-landlord Jamaluddin and he sold the same to Bhaiya Ram Choudhary and Naubat Lal Chaudhary vide registered sale deed dated 08.08.1949 and after their death the descendants are continuing in possession, they are paying rent and obtaining receipts. The alleged gift deed dated 10.10.1955 is illegal, void and did not transfer any right, title and interest. The alleged gift deed is not with respect to one Katha 15 dhur of land.

7. Learned counsel for the petitioner has submitted that the learned Court below failed to appreciate that the proposed amendment will change the nature of suit as initially suit was filed for 5 dhur land but now the plaintiffs / respondents are claiming additional land. Further, he has submitted that the issues were settled and it was fixed for adducing evidence on behalf of the plaintiff and at the belated stage the petition for amendment of plaint was filed which has



been allowed by the learned Court below without appreciating that due diligence has not been taken by the plaintiff and there was no reasonable explanation for delay. The amendment sought cannot be said as typing mistake and the amendment proposed is time barred also as the suit was filed in year 2008 whereas the amendment petition has been filed in year 2017.

8. Learned counsel for the petitioner submits that the petitioner, by way of amendment, wants to incorporate the statement to the effect that 5 dhur area mentioned in gift deed has been wrongly mentioned but the boundary refers to entire 1 Katha 5 dhur land in gift deed which cannot be allowed, in view of the Section 26 of the Specific Relief Act, as the said rectification in gift deed can only be done by the parties to the gift deed and by none else.

9. Learned counsel for the respondents submits that in the Schedule-1 of the plaint (description of the suit property) as well as in the plaint itself the area of the suit land has been stated as 1 katha 15 dhur. However, in one paragraph it was stated as 5 dhur and it is in the interest of justice that the said amendment is just a clarification of the fact already on record and is essential to bring on record and for the same, the application was filed before the Court concerned and the learned



Court below vide the impugned order, allowed the said application. He has further submitted that since no evidence has been adduced by the plaintiff, accordingly, it cannot be said that the trial has commenced.

10. The Hon'ble Supreme Court, in the case of **Chander Kanta Bansal Vs 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.

11. In **M/s Ganesh Trading Co. Vs Moji Ram** reported as **(1978) 2 SCC 91**, the Hon'ble Supreme Court laid down the principles that provisions of amendment of pleadings, subject to such terms as to costs and giving of all the parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them.

12. The Hon'ble Supreme Court in **Revajeetu Builders and Developers Vs. Narayan Swamy and Sons and Others**



(2009) 10 SCC 84 on critically analysing both the English and Indian Cases, held that some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

*(i) whether the amendment sought is imperative for proper and effective adjudication of the case.*

*(ii) whether the application for amendment is bona fide or mala fide.*

*(iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money.*

*(iv) refusing amendment would in fact lead to injustice or lead to multiple litigation.*

*(v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case, and*

*(vi) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

13. The Hon'ble Supreme Court in **Pankaja and Anr. vs. Yellappa (D) by L.Rs. and Ors.** reported as **AIR 2004 SC 4102** on the point of limitation quoted the judgment of the Hon'ble Supreme Court in **Ragu Thilak D. John v. S. Rayappan and Ors.** reported in **2001(2) SCC 472** wherein it was held as under:

*“ the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation.*



*The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed.”*

14. In **Vidyabai Vs. Padma Latha & Anr. (2009) 2 SCC 409** the Hon’ble Supreme Court observed that the date on which the issues are framed is the date of first hearing. Provisions of Code of Civil Procedure envisage filing of an affidavit in lieu of examination-in-chief of witness would be amount to ‘commencement of proceeding’

15. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. The defendants / petitioners are not prejudiced because they will have an opportunity of meeting the amendment sought to be made.

16. Thus, the purpose behind allowing amendments to pleadings is to avoid multiplicity of proceedings. However, the parties cannot misuse the provisions of procedural law to delay a trial. It is well settled that delay in bringing the amendment itself, is no ground to refuse the amendment. Such amendments seeking determination of real question of controversy between the parties shall be permitted to be made.



17. The proposed amendment is not changing the nature of the suit and is not introducing a new case on a new basis constituted by new facts and no prejudice shall be caused to the defendants if amendment is allowed for settling all the issues and proper adjudication between the parties. The plea that amendment is barred by time is arguable and the learned Court below has already given liberty to file additional written statement, if required.

18. Applying the principles with respect to amendment in pleading to the present case and in the light of above discussion of facts and law, I find that the learned trial Court has not committed any illegality, error or mistake and accordingly the impugned order does not warrant any interference by this Court under Article 227 of the Constitution of India. The application is being devoid of any merit and is liable to be dismissed.

19. This application is, accordingly, dismissed.

**(Sunil Dutta Mishra, J)**

saaurabhkr/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | 13.07.2023 |
| Uploading Date    | 27.07.2023 |
| Transmission Date |            |

