

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.606 of 2017

1. Dashrath Purbey, Son of Late Ram Sunder Purbey Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
2. Arun Purbey, Son of Late Ram Sunder Purbey Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
3. Smt. Usha Devi, Daughter of Late Ram Sunder Purbey Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
4. Smt. Punam Devi, Daughter of Late Ram Sunder Purbey Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
6. Shambhu Purbey, Son of Late Lakshmi Purbey Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
7. Amarnath Purbey, Son of Late Lakshmi Purbey Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
9. Smt. Anjaul, Daughter of Late Lakshmi Purbey Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.

... .. Petitioner/s

Versus

1. Smt. Amol Devi, Wife of Sri Hare Ram Acharya Mauza Bank P.O. and P.S. Biraul District Darbhanga.
2. Santosh Mahto, S/o Late Rameshwar Mahto Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
3. Raja Mahto, Minor, S/o Santosh Mahto Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
4. Guddu Mahto, Minor, S/o Santosh Mahto Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
5. Sonu Mahto, Minor, S/o Santosh Mahto Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.
6. Roushan Mahto, Minor, S/o Santosh Mahto Resident of village Afzala Tola Kheba Supaul Bazar P.S. Biraul, District Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Singh, Advocate
For the Respondent/s : Mr. Umanath Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

10 15-03-2023

Heard learned counsel for the parties.

2. This Miscellaneous application has been filed



against the Order dated 16.02.2017 and 22.02.2017 passed by learned Sub Judge Biraul, Darbhanga whereby and whereunder the amendment petitions filed under Order 6 Rule 17 Code of Civil Procedure by plaintiffs / petitioners in Title Suit No. 49 of 2003 have been rejected.

3. The petitioners are legal heirs of original plaintiffs. The plaintiffs have filed the Title Suit bearing Title Suit No. 49 of 2003 in the Court of learned Sub-Judge, Biraul for declaration of title, confirmation of possession, permanent injunction against defendant No. 1, recovery of possession if plaintiffs be dispossessed during the pendency of the suit along with other reliefs.

4. It appears from the record that the petitioners / plaintiffs filed petitions dated 16.12.2016 and subsequently on 06.01.2017 under Order 6 Rule 17 and under Section 151 C.P.C. stating that inadvertently some facts could not be typed and some contents have been repeated hence petitioners may be allowed to amend the plaint which was opposed by the defendants. After hearing both the parties and on perusal of record, the learned Court below dismissed the same.

5. Learned counsel for the petitioners submits that the proposed amendments are required for complete and effective



adjudication of the dispute between the parties and no new case is brought and the relief is based on the pleading. He has further submitted that if the proposed amendment is allowed, the same cannot prejudice the respondents-defendants as the proposed amendment is clarification of facts and by the said amendments nature of suit does not change. He has further submitted that the impugned order suffers from jurisdictional error as the party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even some fraction of rules of procedure. Further, he submits that it is well settled that rules of procedure are intended to be handmaid to the administration of justice and the learned trial Court ought to have allowed the amendment petitions.

6. On the other hand, learned counsel for the respondents vehemently opposed the argument of the learned counsel for the petitioner and submits that the Suit is of year 2003 which is fixed for the argument and the proposed amendment will change the nature of the suit which cannot be allowed. He further submits that earlier also the plaintiff used to file the amendment applications only to delay the proceeding of the suit. Further, it is submitted that there is no valid explanation for filing the amendment petitions at the stage of final argument



and the applications are not *bona fide* and no due diligence has been shown by the petitioners. It is further submitted that the impugned orders are legal, requires no interference by this Court under Article 227 of the Constitution of India.

7. From perusal of the impugned order, it appears that the proposed amendment petitions were filed during the final stage of argument and the learned trial Court found that by the proposed amendment, the petitioners want to change the nature of the suit. Accordingly, considering the stage of the suit, delay and nature of the amendment, the trial Court rejected the amendment petitions.

8. The Hon'ble Supreme Court in the case of **J. Samuel and Others Vs. Gattu Mahesh and Others reported in (2012) 1 PLJR SC 412** observed that the entire object of amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delay in filing the application.

9. It is further observed that 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 in any event, omission of mandatory requirement running in three to four sentences cannot be a typographical error as claimed by the plaintiffs.

10. The Hon'ble Supreme Court in the case of **Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and Others reported in (2017) 14 SCC 120** held that there had to be a valid basis made out in the application and first of all there had to be *bona fide* on the part of the plaintiffs and a reasonable explanation for the delay.

11. This Court in the case of **Sayed Hasibuddin Vs. Syed Md. Akram Hussain and Others (2006) 4 PLJR 260** in paragraph 3 observed that the said proviso has been added in year 2002 by Code of Civil Procedure Amendment Act, 2002 and it came into force with effect from 01.07.2002. The onus is now on the parties seeking the amendment to satisfy the Court that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In other words, amendments are not to be allowed merely because they are clarificatory in nature or removing any ambiguity after trial has



commenced. There is a drastic change in the powers of the Court to consider and allow the amendments once trial has commenced.

12. In the present case, there is no explanation of due diligence for filing amendment petition at the stage of final argument and the only excuse given is that due to mistake of typist, some wrong facts have been typed. This is contrary to due diligence clause contains in the proviso of Order VI Rule 7 C.P.C.

13. In view of the aforesaid facts and circumstances and the legal provisions discussed above, I find that the trial Court did not commit any error of jurisdiction calling for interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. The application is devoid of merit and this application is liable to be dismissed.

14. This Civil Miscellaneous Application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

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