

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1883 of 2018**

1. Ram Swarup Yadav, Son of late Gonu Yadav, Residents of Agaiya, P.S. Sanokhar District Bhagalpur.
2. Shankar Yadav Son of Late Gonu Yadav, Residents of Agaiya, P.S. Sanokhar District Bhagalpur

... .. Petitioner/s

Versus

1. Bharat Yadav Son of Bhola Yadav Residents of Village-Agaiya, P.S. Sanokhar, P.O. Choti Naki and District Bhagalpur
2. Ramawatar Yadav Son of Fulka Yadav Residents of Village-Agaiya, P.S. Sanokhar P.O. Choti Naki and District Bhagalpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ganpati Trivedi, Sr. Advocate
		Mr. Madan Mohan, Advocate
For the Respondent/s	:	Mr. Diwakar Yadav, Advocate

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

Date : 09-05-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous application under Article 227 of the Constitution of India has been filed against the order dated 10.08.2018 passed by learned Sub Judge, Kahalgaon in T.S. No. 286 of 2011 whereby the trial Court has rejected the application dated 04.04.2018 under Order VI Rule 17 of the Code of Civil Procedure (for short 'CPC') filed by the petitioners seeking amendment in the plaint.



3. The plaintiffs who are petitioners herein filed Title Suit No. 286 of 2011 for declaration that the name of Bharat Yadav mentioned in new Khatian of Khata No. 197 of mauza Agaiya (suit land) is wrong and illegal having no concern with the suit land and the transfer of suit land by defendant no. 1 Bharat Yadav (by mentioning the name of his father as Gainu Yadav) is illegal and title and possession of the plaintiffs have not been affected and purchaser has got no title over the same.

4. Plaintiffs are sons of Gonu Yadav. It is claimed that by mistake of survey department in survey khatian of suit land the name of Bharat Yadav son of Gainu Yadav is wrongly mentioned and taking advantage of the same Bharat Yadav sold the suit land to defendant No. 2 which cast a cloud on the title and possession of plaintiffs. It is claimed that Gainu Yadav had no son namely Bharat Yadav.

5. The defendants appeared and filed their written statement. It is stated therein that defendant no. 2nd party have purchased the suit land from Bharat Yadav @ Ram Naresh Yadav, son of Gonu Yadav. It is further asserted that suit land was amicably partitioned between the three sons and the father and the said oral partition was reduced into writing duly signed by all the four persons and accordingly, the suit land fall in the share of Ram



Naresh @ Bharat Yadav, son of Gonu Yadav and, thus, he has mutated his name and was paying rent. Gonu Yadav and Ram Swaroop Yadav had also sold their land through registered sale deed to different persons and, thus, the alleged oral partition was acted upon.

6. On 04.04.2018, the plaintiffs filed a petition under Order VI Rule 17 of CPC seeking amendment in the plaint stating that due to sheer inadvertence, there are some omissions in the plaint which are required to be corrected and the plaint be amended accordingly. The learned trial Court vide the impugned order rejected the said petition.

7. Learned senior counsel for the petitioners submits that the amendment sought is clarifactory in nature. No new cause of action has been incorporated by way of amendment sought in the plaint and prayer in the relief portion is also not barred by law of limitation. The amendment sought is on mere specification of the sale deed giving details thereof. Further, it is submitted that no prejudice would be going to be caused to the defendants as the suit itself is at the initial stage as the defence evidence are yet to be examined. Learned counsel for the petitioners submits that by refusing to grant amendment, the learned Court below acted illegally and suffers from jurisdictional error.



8. Learned senior counsel for the petitioners relied upon a decision of the Hon'ble Supreme Court in **M/s Ganesh Trading Co. vs. Moji Ram** reported as **(1978) 2 SCC 91** and further submits that the defective pleading can be cured although there is some delay in filing the petition.

9. On the other hand, learned counsel for the respondents submits that evidence on behalf of the plaintiffs was already completed and the proposed changes, if allowed, the whole plaint / case is to be replaced by new pleading. The plaintiffs have not acted with due diligence. The plaintiffs by the amendment proposed to change / replace the party respondent also. The learned trial Court has rightly rejected the amendment application. There is no jurisdictional error or illegality in the impugned order passed by the learned trial Court.

10. 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.*

11. There are some other important factors also which may be kept in mind while dealing with application filed under Order VI Rule 17 CPC. These are only illustrative and not exhaustive.

12. The law is now well settled that the Courts have very wide discretion in the matter of amendment of pleadings but Court's powers must be exercised judiciously and with great care. While deciding applications for amendments the Courts must not refuse *bona fide*, legitimate, honest and necessary amendments and should not permit *mala fide*, worthless and/or dishonest amendment.

13. It was further observed by Hon'ble Supreme Court in the aforesaid Judgment in **Revajeetu Builders and Developers** (supra) that the decision on application made under Order VI Rule



17 CPC is a very judicial exercise and the said exercise should never be undertaken in a casual manner.

14. In the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another (2022 SCC Online SC 1128)** the Hon'ble Apex Court summarised the guiding principles for deciding an application under Order VI Rule 17 CPC. It is observed that where the amendment changes the nature of suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment be disallowed.

15. Having heard learned counsel for the parties and on perusal of materials on record including the impugned order, it appears that the evidence of the plaintiffs had already been closed on 04.04.2018. The learned trial Court in the impugned order observed that from perusal of whole proposed amendment, it appears that plaintiffs have filed the present suit against one Bharat Yadav son of Bhola Yadav and now he wishes to replace him by Ram Naresh Yadav @ Bhola Yadav son of late Gonu Yadav. The proposed change has led the plaintiffs to seek amendment in each and every para of the plaint. It has further been observed that the whole plaint is to be replaced by new pleading. The evidence of plaintiffs is already over in terms of



present plaint. Allowing of present petition would lead to *de novo* trial of the suit. Now the plaintiffs have got no grievance against the original defendants and they have filed the present suit without any basis against them. The trial Court also held that the plaintiffs have not acted with due diligence.

16. In view of the aforesaid facts and circumstances and considering the law discussed above, in my considered opinion, there is no jurisdictional error or illegality in the impugned order and no interference is required by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

17. In the result, this Civil Miscellaneous Application is dismissed. There shall be no order as to costs.

(Sunil Dutta Mishra, J)

P. Kumar

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.05.2023
Transmission Date	

