

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 405 of 2018

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Lachi Devi @ Lachi Daughter of Late Mahngu Kewat, Wife of Gorakh Kewat
Resident of Village - Navtar Bodhi Chapra, P.O. - Gathiyawha, Police Station
- Hanumanganj (Khadda), District Kushi Nagar (Uttar Pradesh).

... .. Petitioner/s

Versus

2. Punam Devi, Daughter of Dasrath Kewat, Wife of Yogendra Kewat,
Resident of Village - Parsahni, P.O. - Yamunapur, Police Station - Laukaria,
District West Champaran.
3. Nand Lal Kewat
4. Hiralal Kewat
Both are sons of Mishri Kewat, resident of Village - Goieti, Post - Barwal,
Police Station - Bagaha, District - West Champaran.
- 5.1. Kalawati Devi, Wife of Laxman Kewat.
- 5.2. Dhanmanti Devi, daughter of Laxman Kewat.
Both are resident of Village-Narainpur, P.O.-Narainpur, Police Station-
Bagaha, District-West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhitabh Kumar, Advocate
For the Respondent/s	:	Mr. Chandra Kant, Advocate with Ms. Perna Anand, Advocate and Mr. Navin Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

CAV JUDGMENT

Date : 18-03-2023

Heard learned counsel for the parties.

2. The instant Civil Miscellaneous application under Article 227 of the Constitution of India has been filed for setting aside the order dated 27.03.2017 passed by the learned Sub-Judge-1st, Bagaha, West Champaran in Partition Suit No. 100 of 2008 whereby the learned trial Court has disallowed some of the



amendments filed by the petitioner under Order VI Rule 17 and Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC').

3. The brief facts of the case are that the petitioner is the plaintiff who has filed the Partition Suit No. 100 of 2008 for partition of the suit property being full sister of deceased Dashrath Kewat. On 04.02.2010, Respondents no. 3 and 4 filed their written statement and contested the suit and claimed that the disputed land came in their possession since 1939 and 1945 without any hindrance. It is stated in their written statement that in Khatiyan the suit land is in the name of Jhagaru Kewat who died leaving behind his only son Bandhu Kewat who also died leaving behind his only widow Danpatia Devi and daughter Dhanrajia Devi. Dhanpatia Devi vide gift deeds dated 13.02.1939 and 14.09.1945 gifted her property to her Nati (Mishri Mahto) and given possession to him. Defendants No. 3 and 4 are sons of Mishri Mahto.

4. The plaintiff/petitioner on 15.02.2016 filed an amendment petition under Order VI Rule 17 of CPC after framing of issue and when plaintiff's evidence started which was objected by the defendants. The proposed amendment are for addition of (i) para 10 K, (ii) para 10 Kha in the plaint, (iii) correction in para 1



to substitute Late Nisha Kewat in place of Late Jhagaru Kewat and also (iv) to add in prayer portion 15 K-1 i.e. in view of aforesaid fact declare the alleged registered gift deeds dated 13.02.1939 and 14.09.1945 as forged and fabricated. The Court below allowed the amendment no. 1 and 3 with cost of Rs. 3,000/- considering that the same were formal and explanatory in nature. However, the proposed amendments no. 2 and 4 were rejected on the ground that the plaintiff had got knowledge from the written statement of the defendants filed on 04.02.2010 that Dhanapatiya Devi had gifted the property received from Jhagru Kewat vide registered gift deed dated 13.02.1939 and 14.09.1945 by registered gift deed to her grandson (*Naati*) Mishri Mahto and thereafter Mishri Mahto came into the possession of the said properties. The plaintiff despite the knowledge of the said facts filed the said amendment after six years which is barred by limitation under Section 59 of the Limitation Act.

5. Learned counsel for the petitioner submits that the gift deeds dated 13.02.1939 and 14.09.1945 are forged documents as there was no one in the joint family as Dhanapatiya Devi and no limitation will be applicable for declaring forged and fabricated document as void. He has submitted that the rules of procedural law are handmaid to the administration of justice and the Court



must give the liberal interpretation with respect to due diligence so that the Court can determine the real question in controversy between the parties.

6. He has relied on the judgment of the Hon'ble Supreme Court in the case of **Ganesh Trading Co. v. Moji Ram** reported in **AIR 1978 SC 484** and the judgment of Hon'ble Allahabad High Court in **Shambhu Nath Seth vs. Madan Lal** reported in **AIR 1976 Allahabad 220** (Lucknow Bench). The Hon'ble Apex Court in **Ganesh Trading Co. Vs. Moji Ram** (supra) observed as under;

“Provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued”.

The Hon'ble Supreme Court further observed:

“It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleading, and entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts



to depriving the parties against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit.”

7. In **Shambhu Nath Seth v. Madan Lal** reported in **AIR 1976 Allahabad 220 (Lucknow Bench)**, in which the Hon’ble Allahabad High Court observed:

“The general rule in the matter of allowing amendment is that all amendments are to be allowed which do not purport to set up a new case and which would not work injustice to the other side and which will be necessary for the purpose of determining the real question in controversy between the parties. It is further observed that the amendments cannot be refused merely on the ground of delay unless there is strong reason to think that the amendments was mala fide and was sought to be made in order to delay proceedings or prolong litigation.”

8. Learned counsel for the petitioner submits that the learned trial Court ought to have allowed the said amendment as the same was essential for adjudication in the suit.

9. On the other hand, learned counsel for the respondents submits that the learned trial Court has rightly rejected the proposed amendment as the said amendments are time barred and also that the allegation that said gift deeds are forged documents cannot be challenged in the partition suit. He has



further submitted that proviso are inserted in Order VI Rule 17 CPC with the objective to check the frivolous applications and curb the attitude of the parties to prolong the adjudication of the suit. Accordingly, he has prayed to dismiss this petition having no merit.

10. In **Radhika Devi Vs. Bajrangi Singh and Ors. AIR 1996 Supreme Court 2358**, the Hon'ble Supreme Court observed that where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. In that case, the gift deed was executed and registered as early as July 28, 1978 which is a notice to everyone. Even After filing of the written statement, for 3 years no steps were taken to file an application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. It was lastly held that the High Court, therefore, was right in refusing to grant permission to amend the plaint.

11. The division Bench of this Court in **Rahman Mian Vs. Reyazul Ansari 2005 (3) PLJR 455** observed that the question is well settled by the Hon'ble Supreme Court that where a parties acquire a right by bar of limitation and if the same is sought to be taken away by an amendment, in such circumstances



it would be refused specially when the deed was executed much earlier whereafter they were registered also which is legal notice to everyone and even after filing of the written statement for more than three years no steps were taken to file the application for amendment of the plaint challenging those deed. Hence, the accrued right in favour of the defendants would be defeated if such amendment of plaint is permitted. It was further observed therein that deeds in question were executed by the ancestor of the plaintiff themselves whereafter they were registered also and subsequently the defendants themselves informed the plaintiff about the said deeds by serving a copy of written statement, but when no steps for adding any relief challenging the said deeds was taken by plaintiff according to provision of Article 59 of the Limitation Act wherein the time prescribed therein. Allowing such amendments is bound to cause serious prejudice to the defendants.

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

14. 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.

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

16. It appears that even prayer can be said to be too vague. How the plaintiff can now be permitted to challenge various gift deeds created time to time. The plaintiff was aware that there are gift deed in favour of defendants. In that view of the matter, now after a number of years, plaintiff cannot be permitted to challenge the gift deeds in this proceeding. In the present case gift deeds were of 13.02.1939 and 14.09.1945 and the registered documents are notice to everyone. Even after filing of written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of respondents would be defeated by permitting amendment of plaint. When the execution of gift deeds is within the knowledge of plaintiff from the date of written statement filed by defendants on 04.02.2010, the limitation making reference of those documents, but the amendment petition is filed only on 15.02.2016. As such by the date of filing amendment petition is hopelessly barred by limitation and such amendment cannot be allowed. Hence I do not find any valid ground to interfere in the impugned order.



17. In view of the aforesaid facts and circumstances and considering the law discussed above, in my considered opinion there is no illegality in the impugned order for interference by this Court in the jurisdiction under Article 227 of the constitution of India.

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

(Sunil Dutta Mishra, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	22.02.2023
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