

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1146 of 2018

1. Hirdaya Devi W/o Shri Rajanandan Dubey,
2. Rajanandan Dubey S/o Late Mahanth Dubey @ Braj Kishore Dubey, Both
R/o Village- Gobraura, PO+PS- Lauriya, District- West Champaran.

... .. Petitioner/s

Versus

1. Brij Bihari Mishra S/o Late Rama Kant Mishra, R/o Village- Bakawa, P.O.-
Patilar, PS- Chautarwa, District- West Champaran.
2. Smt. Alaka Chaudhary W/o Rajesh Kumar Chaudhary, R/o Village-
Sonasati, PS- Sikarur, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Navin Kumar, Advocate Mr. Chandra Kant, Advocate
For the Respondent/s	:	Mr. Aditya Nath Jha, Advocate Mr. Vijay Kr Singh No. 1, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

13 24-04-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed for setting aside the order dated 18.06.2018 passed by learned sub-Judge 1st Bagaha, West Champran in Title Suit No. 105 of 2017 whereby and whereunder the learned trial court has allowed the amendment petition filed on behalf of the plaintiff.

3. The plaintiff / respondents 1st set filed title suit no. 105 of 2017 for declaration of four deeds of gift each dated



07.09.1962 executed by Bhuneshwar Nath Mishra to defendant no. 1 with respect to suit land as forged and illegal and also for the confirmation of title and possession of plaintiff over the suit land.

4. The defendants are the petitioners herein who have filed the written statement in the trial court denying the claim of the plaintiffs and the averments made in the plaint and contested the suit.

5. The amendment petition has been filed by the plaintiff for certain amendments in the petition on the grounds, inter alia, that due to mistake of typist some important words left to be typed and some words have been wrongly typed in the plaint which are required to be included and corrected in the plaint which are formal in nature. It was objected by the petitioners. Learned court below vide the impugned order allowed the said petition dated 29.01.2018 with imposing cost observing that the amendment is formal in nature and the issues in this case has not been framed.

6. Learned counsel for the petitioners submits that the plaintiffs by the proposed amendment wants to make out a new case which is contrary to the case set up earlier and if the proposed amendment is allowed then the defendant will be



prejudiced. He has pointed out that in paragraph 3 of the plaint the case of the plaintiff is that the suit property is the separate property of the plaintiff. However, by amendment plaintiff wants to incorporate that the suit property is of ancestral joint Hindu Family property. He has referred the judgment of this Court in the case of **Gorakhnath Singh Vs Raj Kumar Singh and Ors.** reported in **2019 (4) PLJR 1025**, on the point that the plaintiff is trying to introduce a new case and the same cannot be allowed.

7. On the other hand learned counsel for the respondents submits that it is the case of the plaintiff that the suit property is un-divided Hindu Coparcenary Property and same plea has been taken in the plaint. In this regard he has referred paragraph nos. 5 and 12 of the plaint to show that plaintiff has specific case that the suit property are ancestral joint family property and the amendment in plaint will not change the nature of the suit.

8. 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.

9. 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.

10. I have heard the leaned counsel for the parties and perused the material on record, including the impugned order, the trial court observed that the proposed amendments are formal in nature and the said amendment petition has been filed before the framing of issues. The learned trial court considering the said fact allowed the amendment petition with cost.

11. In this case the learned trial court has exercised judicial discretion assigning the reason, I do not find any jurisdictional illegality or error for interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution.



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

(Sunil Dutta Mishra, J)

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