

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1314 of 2018**

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Mohammad Shamimuddin @ Md. Shamimuddin, son of Late Md. Ibrahim,
resident of village - Darhi Patti, P.S. Minapur, Sub-Division and Munsif
Muzaffarpur, District Muzaffarpur.

... .. Petitioner/s

Versus

1. Sajda Khatoon, wife of Sri Anisur Rahman, resident of village - Darhi Patti,
P.S. Minapur, Sub-Division and Munsif Muzaffarpur, District Muzaffarpur.
2. Md. Allimuddin, son of Late Md. Ibrahim, resident of village - Darhi Patti,
P.S. Minapur, Sub-Division and Munsif Muzaffarpur, District Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Syed Qaisar Hasan, Advocate
For the Respondent/s :

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

Date : 23-02-2023

Despite valid service of notice, no one appears on
behalf of the respondents.

2. Heard learned counsel for the petitioner.

3. This application has been filed against the order
dated 18.07.2018 passed in Title Suit No. 159/2001 by the
learned Execution Munsif, Muzaffarpur whereby the learned
Court below has allowed the amendment petition dated
02.06.2018 filed by the plaintiff with cost.

4. The brief facts of this case are that the
plaintiff/respondent no. 1 purchased 13 decimals of land of
Revisional Survey Plot No. 719 detailed in schedule I of the



plaint. She filed suit bearing Title Suit No. 159 of 2001 for declaration of title over the suit property. The petitioner-defendant no. 2 appeared and filed his written statement denying the claim of the plaintiff-respondent no. 1 and after framing of issue, the trial commenced and the evidence of the plaintiff was closed on 10.01.2018 and the evidence of petitioner-defendant no. 2 was started. The plaintiff- defendant no. 1 filed a petition for amendment on 30.05.2018 against which the petitioner filed rejoinder raising question of its maintainability especially with regard to delay in filing the amendment petition and also that plaintiff failed to establish due diligence. However, the learned trial Court allowed the said amendment vide the impugned order dated 18.07.2018.

5. Learned counsel for the petitioner submits that the amendment petition has been filed by the plaintiff to prolong the disposal of the suit and also to harass the petitioner. The amendment petition has been filed in belated stage without establishing the due diligence and the amendment sought cannot be stated as the mistake of typist. He has submitted that in order to avoid delay in adjudication of litigation, the provision of Order VI Rule 17 CPC was amended in the year 2002 with the objective to stop the frivolous amendment application and to



expedite the disposal of the suit.

6. Having heard the learned counsel for the petitioner and on perusal of the impugned order, it appears that the learned Court below found that the proposed amendment in plaint was of general nature and after the amendment, there shall be no change in the nature of the suit. The Court also found that there was long delay in filing amendment application. Accordingly, cost of Rs. 1,000/- (one thousand) was imposed on the plaintiff and the amendment petition was allowed.

7. The Hon'ble Supreme Court in **Revajectu 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.

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

9. 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.

10. 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.

11. Considering the aforesaid principles, it appears firstly that the proposed amendment will not cause prejudice to the petitioner which cannot be compensated adequately in terms



of money; and secondly that the proposed amendment will not fundamentally change the nature and character of the case. Accordingly, the trial Court has rightly allowed the amendment application with cost.

12. In my considered view, there is no illegality or error in the impugned order which requires interference by this Court under the supervisory jurisdiction of this Court under Article 227 of the Constitution. The instant Civil Miscellaneous Application is liable to be dismissed and accordingly, the same is hereby dismissed.

(Sunil Dutta Mishra, J)

P. Kumar

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	02.03.2023
Transmission Date	

