

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.67 of 2019

1. Bibi Razia Khatoon, Wife of Sabir Khan, Resident of Mohalla- Qila Par, Town, P.O. and P.S.- Biharsharif, District- Nalanda.
2. Ali Raza Khan, Son of Md. Zafir Khan, Resident of Mohalla- Qila Par, Town, P.O. and P.S.- Biharsharif, District- Nalanda.

... .. Petitioner/s

Versus

Jubair Khan, Son of Zafir Khan, Resident of Mohalla- Garh Par, Town, P.O. and P.S.- Biharsharif, District Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Farooque Azam, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 09-05-2023

Heard learned counsel for the petitioners.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India against the order dated 06.10.2018, passed by learned Munsif, Civil Court, Biharsharif in Execution Case No. 21 of 1999, whereby and whereunder the petition dated 29.08.2018 filed by the decree holder has been allowed.

3. Learned counsel for the petitioners submits that the aforesaid petition has been filed at much belated stage and the same is barred by the law of limitation as such decree is executable within twelve years. He further submits that the petitioners have already filed Title Suit No. 97 of 2000, which is pending in the court below. It is



further submitted that the judgment was passed *ex-parte* and the execution petition is itself not maintainable. Accordingly, amendment in the said execution petition does not arise.

4. The Hon'ble Apex Court in the case of **Revajeetu Builders and Developers Vs. Narayan Swamy and Sons and Others reported in (2009) 10 SCC 84** held that some basic principles emerge which ought to have 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.

5. 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.

6. The purpose and object of Order VI Rule 17 of the Code of Civil Procedure is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Such amendments seeking determination of real question of controversy between the parties shall be permitted to be made.

7. In **Rajesh Kumar Aggarwal Vs. K.K. Modi, (2006) 4 SCC 385** the Hon'ble Supreme Court observed that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the large interest of doing full and complete justice to the parties before the court.

8. The Law is well settled that Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting *mala fide*, or



that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs.

9. Having heard the learned counsel for the petitioners and perused the material on record including the impugned order, it appears that in the execution application, number of plot is not mentioned, however, in the decree, it was mentioned. Accordingly, the learned Execution Court held that the proposed amendment is formal in nature and the said amendment is necessary for disposal of the execution case and the limitation is provided for execution of the decree, not for the amendment of the application. Accordingly, the said application of amendment incorporating the plot number of the application is allowed with cost. The amendment shall advance the cause of justice.

10. In view of the aforesaid facts and circumstances and the legal provisions discussed above, in my considered opinion there is no jurisdictional error or illegality in the impugned order for interference by this Court in the jurisdiction under Article 227 of the Constitution of India. The application is being devoid of any merit.

11. In the result, this Civil Miscellaneous application



is dismissed. There shall be no order as to costs.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	17.05.2023
Transmission Date	

