

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18659 of 2012

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Kuldeep Saw S/O Late Balkisun Saw Resident Of Village Gopalpur, P.S.
Khaira, District Jamui.

... .. Petitioner/s

Versus

Pradeep Saw S/O Late Balkisun Yadav Resident Of Village Gopalpur, P.S.
Khaira, District Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan Singh, Advocate

For the Respondent/s : Mr. Madan Prasad Singh No. 2, Advocate
Mr. Dharmendra Kumar Raju, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

9 10-02-2023 Heard the parties.

2. In the present writ application filed under Article 227 of the Constitution, the petitioner has sought amendment of written statement filed in Title Suit No. 13 of 2009.

3. Learned counsel appearing on behalf of the petitioner submitted that due to inadvertence the following statements have been made in paragraph no. 10 of the written statement, which require amendment.

“यह कि अर्जी के पारा सं०-1 कथन कुछ सही है तथा कुछ गलत है। असल हाल यह है कि दोनों पक्षों के स्वर्गीय पिता ने अपने जीवन काल में 4 डी०



जमीन अपनी पत्नी मो० राधा देवी के नाम से खरीदा था जिसे वादी ने नहीं दर्शाया है।”

4. Learned counsel further submitted that a statement has been made in the said paragraph that the father of the petitioner and the plaintiff-respondent no. 1 had purchased the land in the name of his wife (mother of the plaintiff and the defendant). It is the specific case of the petitioner for seeking amendment in that on recital made in the sale deed, it appears that the sale deed was executed in favour of the father of the petitioner and the plaintiff-respondent no. 1 and on the basis of such information only incorrect statement made in the WS is required to be amended, which is reproduced hereunder:-

क'. दोनों पक्षों के स्व० पिता ने अपने जीवन काल में 2 डी० जमीन अपने नाम से खरीदा था।

ख'. पिता बाल किशुन साव मालिक थे तथा संयुक्त परिवार की आमदनी से अपने नाम से खरीदा।

ग. संयुक्त परिवार के सभी लोग पिता के नाम से खरीदा था।

5. Learned counsel further submitted that such amendment only amount to rectification of mistake which was committed at the time of drafting of the case and due to said inadvertence an incorrect statement has been made. He further



submitted that the amendment will not change the nature of the suit rather it will facilitate in deciding the issue framed. Learned counsel further relied upon a recent judgment reported in 2022 live law (SC) 729 ***Sanjeev Builders Pvt. Ltd. vs. Life Insurance Corporation of India.***, paragraph no. 25 and 70, reproduced as under:

“25. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for



amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement. (See South Konkan Distilleries & Anr. v. Prabhakar Gajanan Naik & Ors., (2008) 14 SCC 632)

70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless 21



- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
- (ii) the amendment changes the nature of the suit,*
- (iii) the prayer for amendment is malafide, or*
- (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
- (x) Where the amendment changes the nature of the 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 must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*
- (xi) Where the amendment is sought before*



commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).”

6. Learned counsel appearing on behalf of the respondent has vehemently opposed the prayer of the petitioner and has submitted that the proposed amendment will amount to withdraw the admission made in favour of the plaintiff, and as such the same will prejudice the interest of the plaintiff (the respondent hereinafter). He has also relied on Paragraph No. 25 of the aforesaid judgment. He further submitted that the impugned order is well considered and the same do not require any interference.

7. Learned counsel has made specific statement that the petitioner has played tactical method to delay the trial, therefore, the present writ petition filed is fit to be rejected.

8. Having considered the rival submissions of the



parties and having perused the written statement, particularly, plaint and paragraph 10 of the written statement which has been recorded above, it appears due to inadvertence at the time of drafting of the written statement in place of sale deed having been executed in favour of the father of the petitioner, the same has been recorded that it was executed in name of his wife who is the mother of the plaintiff and the defendant (petitioner) in place it is required to be stated that the father of the petitioner was the buyer and the sale deed was executed in the name of his father.

9. The petitioner has sought amendment to the above effect that the same should be read that the sale deed was executed in favour of the father of the petitioner out of his joint family earning.

10. The issue for determinations is as to whether, the amendment will amount to change the nature of the suit or the same will facilitate in deciding the issues framed for proper adjudication of the Title Suit.

11. The Apex Court, as well as, this Court in several judicial pronouncements have held that:

“The courts are more generous in allowing the amendment of the written statement as question of prejudice is



less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn.”

12. The proposition has been reiteratrated in 2022 live law (SC) 729 *Sanjeev Builders Pvt. Ltd. vs. Life Insurance Corporation of India*(supra).

13. The amendment sought by the petitioner is allowed in the light of the provisions of Order VI Rule 17, Code of Civil Procedure. The amendment will not cause any prejudice to the plaintiff in any manner, rather the same will facilitate to reside the issue involved in the Title Suit No. 13 of 2009.

14. Accordingly, the writ petition is allowed, the impugned order dated 22.08.2012 passed in Title Suit No. 13 of 2009 is set aside.

(Purnendu Singh, J)

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