

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 834 of 2017

Krishna Kant Prasad, Son of Late Ram Chandra Prasad, Resident of Mohalla-
Indra Nagar, Road No. 4, P.O. and P.S.- Jakkanpur, Town and District- Patna.

... .. **Defendant/Petitioner**

Versus

1. Sudheshwar Yadav Son of Late Mahadeo Yadav
2. Chameli Devi, Wife of Late Dina Nath Yadav
3. Ranjit Kumar
4. Ajit Kumar
5. Pappu Kumar
6. Satyendra Kumar Sons of Late Dina Nath Yadav
All are Resident of Bangali Tola, Indra Nagar, Road No. 3, P.S.- Jakkanpur,
District- Patna.

-----**Plaintiffs/Respondent 1st Set**

7. Ram Kesho Yadav
8. Lal Bihari Yadav
Both Sons of Late Mahadeo Yadav and Resident of Bangali Tola, P.S.
Jakkanpur, District- Patna.

-----**Defendants/Respondents 2nd Set**

Appearance :

For the Petitioner/s	:	Mr.Syed Hussain Majeed, Advocate
For the Respondent/s	:	Mr. Jitendra Kishore Verma, Advocate
		Mr. Ravi Raj, Advocate
		Ms. Shreyash Goyal, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 20-06-2023

Heard learned counsel for the parties.

2. This Civil Misc. Application has been filed under Article 227 of the Constitution of India against the order dated 21.02.2017 passed by the learned Civil Judge (Senior Division)-3rd, Patna by which the amendment petition filed by the plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') for amendment of



the plaint in Title Suit No. 211 of 2007 has been allowed.

3. The brief facts of the case are that the plaintiff no. 1 and defendants are full brothers and plaintiff no. 2 is the sister-in-law of plaintiff no. 1 and they are member of the joint Hindu Mitakshra family living in jointness but separate in mess and business. The plaintiffs filed a Title Partition Suit No. 211 of 2007 for partition of family property on 08.10.2007. The defendant Nos. 1 and 2 transferred their half share in plaint Schedule-I property to the petitioner who was impleaded as defendant no. 3 in the partition suit on his application for impleadment. The petitioner filed his written statement on 07.01.2012 and claimed that the suit property is not joint family property of the plaintiffs and defendant Nos. 1 and 2. In fact, after purchase of the plot no. 269, the plaintiffs and defendant Nos. 1 and 2 amicably partitioned the said plot and by the said partition, the eastern 10 dhur was allotted to defendant Nos. 1 and 2, who sold the said plot to the petitioner for valuable consideration and put him in possession of the same and he is in continuous, open, peaceful and uninterrupted possession over the suit land. The petitioner has no concern with the other suit land. The defendant Nos. 1 and 2 not filed their written statement in the suit. The issues were framed in the suit and the



plaintiff evidence was closed on 31.10.2013. After deposition of all the witnesses, the evidence on behalf of defendants was also closed on 29.09.2016.

4. It is stated that on 07.05.2013, during the deposition of their witnesses, plaintiffs filed a petition under Order 6 Rule 17 of the CPC for amendment of the plaint which was never pressed despite given ample opportunity and the same was dismissed on 08.10.2015. The plaintiffs again filed an amendment petition under Order 6 Rule 17 read with Section 151 of the CPC on 20.06.2016, which was opposed by the defendant-petitioner. However, the same was allowed by the learned trial Court by the impugned order dated 21.02.2017.

5. Learned counsel for the petitioner has submitted that the learned trial Court failed to appreciate that the amendment application has been filed seeking amendment of pleadings at belated stage without satisfying the Court that in spite of due diligence, they could not place the same before the commencement of the trial. The amendment application was filed after the commencement of trial and it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso appended in Rule 17. He has further submitted that the earlier application for amendment of pleading was dismissed



due to the reason of not pressing the said application by the plaintiffs. However, similar application has been filed thereafter which was liable to be rejected. However, the learned trial court allowed the said amendment application with cost. The learned trial Court failed to realize that by allowing the amendment application, the suit is to go on and *de novo* trial will commence causing prejudice to the petitioner. Lastly, he has submitted that the amendment application filed by the plaintiffs is also barred by law of limitation and the impugned order is liable to be set aside by this Court in its supervisory jurisdiction.

6. Learned counsel for the petitioner has submitted that evidence must be in consonance with pleading and on this point he has relied on a decision of Orissa High Court in the case of **Khali & Ors. vs. Sadhaba Bewa & Ors.** reported in **AIR 1967 Orissa 58** wherein in paragraph no. 2 it is held as under:

“2. The order of the learned Munsif is wholly illegal and without jurisdiction. A Judge hardly acts as a lawyer. It was not a part of the duty of the learned Munsif to have sympathy for the plaintiff for the conflict arising between the pleadings and the evidence. If the evidence is not in consonance with the pleadings, it may be thrown out. It is open to the Judge also to accept the evidence if the conflict is not of a serious nature and both can be reconciled. But in no circumstance an amendment should be suggested and allowed by a Judge, merely



because evidence and the pleadings do not tally. The learned Munsif failed to realise that by the amendment allowed a new trial would begin on various new issues regarding existence of right of easement of a character not already pleaded.”

7. On the other hand, learned counsel for the respondents has submitted that the proposed amendments have already been incorporated in the affidavits of the plaintiffs' evidence in their examination-in-chief on which the witnesses have been cross examined at length by the defendants and by the amendments, no new facts are being introduced but the same are purely explanatory in nature. No prejudice should be caused to the petitioner as the plaintiffs do not want to lead any fresh evidence in this case in view of the amendment. He has further submitted that the question of *de novo* trial does not arise as no new evidence is required to be adduced on behalf of the plaintiffs.

8. Further, he has argued that the learned trial Court has passed the impugned order which is a reasoned order considering the facts and circumstances of the case and is not required to be interfered by this Court under its supervisory jurisdiction.

9. On the point of dismissal of Interlocutory Application on default and subsequent application, the learned



counsel for the respondents relied upon the judgment of this Court in **Sri Ram Janki S.G.N. Samiti Ltd. v. Maksudpur Institute of Research and Education in Natural and Social Sciences** reported in **2007(3) PLJR 68** wherein in paragraph no. 6 it was observed as under:

“6. It is evident that earlier application filed for substituting the heirs was dismissed for default and in fact no decision was taken on merit. In such a situation it cannot be said that the court lacked jurisdiction to pass order for substitution of the heirs on merit.”

10. The Hon’ble Supreme Court in **Prem Bakshi and Ors. vs. Dharam Dev and Ors.** reported in **AIR 2002 SC 559** in paragraph no. 6 held as under:

“6. Now the question is whether the order in question has caused failure of justice or irreparable injury to respondent No.1. It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea, which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment would even remotely cause failure of justice or irreparable injury to any party.”

11. The Hon’ble Supreme Court in **Pankaja and Anr. vs. Yellappa (D) by L.Rs. and Ors.** reported as **AIR 2004**



SC 4102 on the point of limitation quoted the judgment of the Hon'ble Supreme Court in **Ragu Thilak D. John v. S. Rayappan and Ors.** reported in 2001(2) SCC 472 wherein it was held as under:

“ The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed.”

12. The Hon'ble Supreme Court in **Mohinder Kumar Mehra v. Roop Rani Mehra & Ors.** reported in (2018) 2 SCC 132 in paragraph nos. 22, 23 and 24 held as follows:

“22. The Proviso to Order VI Rule 17 CPC prohibited entertainment of amendment application after commencement of the trial with the object and purpose that once parties proceed with the leading of evidence, no new pleading be permitted to be introduced. The present is a case where actually before parties could led evidence, the amendment application has been filed and from the order dated 14.02.2014, it is clear that the plaintiff's case is that parties has led evidence even on the amended pleadings and plaintiff's case was that in view of the fact that the parties led evidence on amended pleadings, the allowing of the amendment was mere formality. The defendant in no manner can be said to be prejudiced by the amendments since the plaintiff led his evidence on amended pleadings also as claimed by him.

23. This Court in **Chander Kanta**



Bansal Vs. Rajinder Singh Anand (2008) 5 SCC 117 has noted the object and purpose of amendment made in 2002. In Para 13, following has been held:-

“13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other’s case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

24. Looking to the object and purpose by which limitation was put on permitting amendment of the pleadings, in substance, in the present case, no prejudice can be said to have caused to the defendant since the evidence was led subsequent to the filing of the amendment application. We, thus, are of the view that looking to the purpose and object of the Proviso, present was a case where it cannot be held that amendment application filed by the plaintiff could not be considered due to bar of the Proviso.”

13. This Court in the case of **Anil Kumar Sah @**

Anil Kumar vs. Most. Tara Kuwar & Ors. reported in **2023(1) BLJ 696** in paragraph no. 9 held as follows:



“9. It is settled law that the delay in bringing the amendment itself, is no ground to refuse the amendment. The suit has been filed for challenging the gift deed, as such, in my opinion, that the proposed amendment is not changing the nature of the suit and is not introducing a new case and no prejudice shall be caused to the petitioner if the amendment is allowed for settling all the issues and proper adjudication of the case between the parties. The proposed amendment has only elaborated the facts and ground already taken in the plaint and is necessary for just decision of the case. The proposed amendment will not give rise to de novo trial, particularly, when the defendant/plaintiff has made a categorically statement that he will not produce further evidence after the amendment in the plaint.”

14. Having heard learned counsel for the parties and considering the facts and circumstances of the case and the legal provisions as discussed above, I find that the learned Court below observed in the impugned order that a perusal of the plaintiffs’ evidence reveals that almost all the proposed amendments have already been incorporated in the affidavits of their examination-in-chief, on which the witnesses have even been cross examined at length by the defendants. Thus, it cannot be said that any new facts are being introduced by way of the amendments. The defendants ought to have raised this objection of the evidence being beyond pleading at the time of cross examining the plaintiffs’ witnesses. But since they have chosen to go ahead and cross examine them on every such point, their



objection does not appear to be tenable. The learned trial Court further observed that the amendments are purely explanatory in nature, bereft of any new facts.

15. In my considered opinion, there is no illegality or irregularity in the impugned order, which is a reasoned order requires no interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. This Civil Miscellaneous Application is *devoid* of merit and is liable to be dismissed.

16. Accordingly, this Civil Miscellaneous Application is dismissed.

17. The stay of proceeding of Title Suit No. 211 of 2007 vide order dated 06.10.2017 is vacated. Pending Interlocutory Application, if any, stands disposed of.

(Sunil Dutta Mishra, J)

P. Kumar

AFR/NAFR	NAFR
CAV DATE	28.03.2023
Uploading Date	20.06.2023
Transmission Date	

