

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2007 of 2017**

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Dew Dat Ray, Son of Late Yamuna Ray, resident of Village - Barka Dian, P.S. Krishna Brahm, District Buxar.

.. ... Petitioner/s

Versus

1. Paras Nath Pandey, Son of Late Ram Nagina Pandey resident of Village - Bhada P.S. Bargaen Gola, P.O. Bhada, District - Buxar.
2. Raju Sah, Son of Late Ram Nawami Sah, resident of Village and Post Brahampur, P.S. Brahampur, District Buxar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chandra Sen Prasad Singh, Advocate
For the Respondent/s	:	Mr. S.D. Yadav, Advocate
		Mr. Damodar Prasad Tiwary, Advocate
		Mr. Braj Bhushan Mishra, Advocate

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

Date : 12-05-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous application is filed under Article 227 of the Constitution of India against the order dated 13.06.2017 passed by the Court of learned Sub-Judge -1, Dumraon in Suit No. 124 of 2015.

3. The brief fact of this case is that the plaintiff/petitioner instituted Suit No. 124 of 2015 in the Court of learned Sub-Judge I at Dumraon for declaration of Title of the suit land which was purchased through registered Sale Deed No. 6639 executed on 02.07.2010 by defendant 1st Party/ Respondent 1st set in favour of plaintiff and to declare Sale Deed No. 10444 dated 11.09.2015 by defendant 1st set/ respondent 2nd set as null and void *ab initio* document having no impact in any way over



the right of plaintiff.

4. The defendant 1st party/ respondent 1st filed writted statement on 04.07.2016 and defendant 2nd party/ respondent 2nd set also filed W.S. on 29.09.2016.

5. The plaintiff/ petitioner filed an amendment petition dated 07.12.2016 for amendment in plaint which has been dismissed by the trial court.

6. The examination-in-chief of defendant 1st set under Order 18 Rule 16 read with Section 151 CPC was taken on record on 23.01.2017.

7. The learned counsel for the petitioner submits that the learned court below failed to appreciate that the amendment sought for in the plaint is necessary and just decision of the case and no irreparable loss would cause to the defendant if the proposed amendment is allowed. The plaintiff/ petitioner filed the amendment petition praying to add some more facts to clarify the plaint.

8. Further it is submitted that the court below failed to appreciate that issues have not been framed in the suit by the Court, however, the evidence of defendant no. 1 has been taken on record by the Trial Court even before the evidence of plaintiff has not been started. It is further submitted that there is



no negligence on the part of the petitioner but it was due to the typographical error which requires amendment in plaint and the petition has been filed bonafide.

9. Learned counsel for the petitioner submits that learned court below has relying on the Judgment of **Ram Lal Mandal vs. Satya Narayan Mandal**, reported in **2013 (1) PLJR 701** dismissed the amendment application filed on behalf of the petitioner without considering that the said judgment is not applicable in this case.

10. On the other hand learned counsel for the respondents submits that the petitioner has not filed the amendment petition with due diligence and the amendment petition is ambiguous and the proposed amendment will change the nature of the suit. Further, he has submitted that the learned trial court has rightly rejected the amendment petition of the plaintiff.

11. Learned counsel for the respondents submits that from perusal of the record, it appears that issues have not been framed in this case. The examination-in-chief of defendant 1st set has been taken on record under Order 18 Rule 16 CPC and it is well settled that examination of a witness de bene esse or on commission does not affect the question of right to begin the evidence. He has conceded that in terms of Section 102 of the



Indian Evidence Act, 1872 initial onus is always on the plaintiff.

12. Issues are framed under Order XIV of CPC. At the first hearing of the suit, the Court after reading the plaint and written statement and after examination under Rule 1 of Order XIV of CPC is to frame issues. After issues are framed and case is fixed for hearing and party having right to begin is to produce evidence, the trial of the suit commenced. Proviso in Order 6 Rule 17 was added by Amendment Act 22 of 2002 to prevent application for amendment being allowed after commencement of trial, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The object is to prevent frivolous applications which are filed to delay the trial.

13. The framing of issues is the crucial part of the trial. Framing of issue helps the parties to lead necessary evidence in support of the claims and reliefs. The Court can amend, add or delete issues at any time before passing a decree if such changes are necessary in the interest of justice. Issues are framed to avoid surprises in the trial and enable the parties to know what they need to provide evidence. The Court cannot frame any issues when no dispute exists between the parties. A claim or right affirmed by one party and denied by the other



shall form a distinct issue in a case.

14. The general rule of adducing evidence as contained in Order 18, Rule 1 of the CPC is that it is the plaintiff who has the right to begin evidence, unless the defendant admits the facts alleged by the plaintiff or contends some additional facts or points of law that the plaintiff is not entitled to the relief claimed.

15. Order 18 Rule 16 provides for examination of witnesses at the instance of any party at any time after the institution of the suit, which means even before the stage of examination of the witnesses commenced in usual course, as provided under Order 18, Rule 1 to 3 - A of CPC.

16. 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.

17. In the context of an application for amendment



under Order 6 Rule 17 C.P.C. the Hon'ble Apex Court in **Prem Bakshi v. Dharam Dev, (2002) 2 SCC 2** observed that it is almost inconceivable as to how mere amendment 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 would only serve advance notice to the other side as to the plea, which a party may take up. Hence, we cannot be envisaged where amendment of pleadings, whatever be the nature of such an amendment, would even remotely cause failure of justice or irreparable loss to any party.

18. The Hon'ble Supreme Court in considering the scope and ambit of proviso to Order 6 Rule 17 CPC in the case of **Chander Kanta Bansal v. Rajinder Singh, (2008) 5 SCC 117 (AIR 2008 SC 2234)** observed as follows:

“.... The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. 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”.

19. Having heard the learned counsel for the parties and on perusal of the material available on the record, it appears that the trial court has rejected the petition of the petitioner for amendment in the pleading of the petitioner on one of the ground that evidence of defendant is going on and, accordingly, the due diligence has not been done by the plaintiff/petitioner for filing the amendment petition at the belated stage. As submitted by learned counsel for the parties that it was not pointed out before the trial court that the issues have not been framed, plaintiff's evidence has not started, however, examination-in-chief of one witness on behalf of the defendant has been taken on record under Order 18 Rule 16 CPC.

20. Considering the aforesaid facts and circumstances, the impugned order dated 13.06.2017 passed by the learned Sub-Judge 1, Dumraon at Buxar in Suit No. 124 of 2015, is set aside and the learned court below is directed to pass the fresh order on the said amendment petition of the petitioner after



hearing the parties.

21. At this stage, learned counsel for the petitioner, submits that the liberty may be given to the plaintiff to withdraw the amendment application and to file fresh amendment petition in place of earlier petition due to ambiguity in the said amendment petition. Learned counsel for the respondents has raised no objection. As prayed for, liberty is given to the plaintiff to file the fresh amendment application, if so required, in place of the earlier amendment petition within six weeks of the communication/ production of this order/ judgment before the learned trial court and the learned court below shall pass the order on the same in place of earlier amendment petition in accordance with law.

21. This Civil Miscellaneous application is accordingly disposed of with the aforesaid direction.

(Sunil Dutta Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.05.2023
Transmission Date	

