

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1396 of 2018**

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Munnilal Bhagat, son of late UmrawBhagat, resident of village – Mohanpur,
P.O. Belhikhas, P.S. Kateya, District – Gopalganj. Petitioner/s
Versus

1. Keshwar Bhagat
2. Kagres Bhagat
Both son of late Umraw Bhagat, Resident of – Mohanpur, P.S. Kataiya,
District – Gopalganj. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidya Nath Thakur, Advocate
For the Respondent/s : Mr. Harendra Prasad, Advocate

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

Date : 11-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed against the order dated 24.03.2018 passed by the learned Munsif, Gopalganj in Eviction Suit No. 8 of 2012 whereby the amendment sought for by the plaintiff-petitioner in the plaint under Order VI rule 17 CPC has been rejected.

3. The brief facts of the case are that the plaintiff/petitioner filed suit bearing Eviction Suit No. 8 of 2012 against the respondents for their eviction from the suit premises and realization of rent. The petitioner purchased the land and constructed a building over the same and gave two rooms to respondents on oral monthly tenancy of Rs. 500/- which was paid regularly but from April, 2012 the same stood stopped. Then, the petitioner asked the defendants / respondents to vacate



the premises on the ground of non-payment of rent and also on the ground of personal necessity of the tenanted premises and when the same was not complied with, the petitioner filed the present suit. The plaintiff / petitioner filed a petition dated 28.04.2015 under Order VI Rule 17 CPC for amendment in plaint which has been objected by defendants / respondents that the same has been filed after issues were framed and plaintiff's witnesses have been examined. The trial Court vide impugned order dated 24.03.2018 rejected the said amendment petition.

4. Learned counsel for the petitioner has submitted that the proposed amendment is formal in nature and will not change the nature of the suit and due to *bona fide*, unintended and inadvertent mistake the amendment sought in the plaint was not noticed earlier. In the paragraph 1 of the plaint the word 'Khas' was used by mistake and the same is contrary to the word Tarayal (adopted son) and the said amendment is necessary to bring the actual fact. It cannot be said that erroneous fact written by mistake come within the ambit of admission. He has further submitted that admission is what is true, firm and infallible. In this case originally it was mentioned that both the parties are siblings which is factually incorrect and correction of the same is in the interest of justice.



5. On the other hand, learned counsel for the respondents submits that the petitioner / plaintiff has filed the amendment petition at belated stage during plaintiff's evidence and the petitioner / plaintiff has admitted that plaintiff and defendants are own brother which has been accepted by the defendants in their written statement and the said admission cannot be allowed to be withdrawn by way of amendment. Further, he has submitted that by allowing the amendment sought for, *de novo* trial would require which is not in the interest of Justice as the same would cause further delay in disposal of suit.

6. During the argument, learned counsel for the petitioner submits that petitioner / plaintiff has already led the evidence on his behalf and he shall not lead further evidence if the amendment sought for is allowed. Accordingly, no prejudice would cause to the respondents / defendants. Learned counsel for the respondents submits that in view of the submission on behalf of the plaintiff / petitioner that no further evidence shall be led, the defendants, have no objection for amendment sought for without prejudice to the rights of defendants / respondents and both the parties may be directed to cooperate in expeditious disposal of the suit.



7. Having heard the learned counsel for the parties and perused the material on record, it appears that the learned court below rejected the amendment petition of the plaintiff on the ground that the amendment petition has been filed at belated stage of plaintiff's evidence and will cause prejudice as the same may cause *de novo* trial. The learned Counsel for the petitioner has stated that the plaintiff shall not lead further evidence on the fact of amendment sought on which respondents have no objection.

8. It is well settled law that the delay in bringing the amendment itself, is no ground to refuse the amendment. The proposed amendment is necessary for just decision of the case and it will not give rise to *de novo* trial, particularly, when the plaintiff has made a categorical statement that he will not produce further evidence after the amendment in the plaint. The defendant will have the right of rebuttal, if required.

9. The law is now well settled that the Courts must not refuse bona fide, legitimate, honest and necessary amendments and should not permit mala fide, worthless and/or dishonest amendment. 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.

10. The Hon'ble Supreme Court in **Revajeetu 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.



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

11. The proposed amendment is not changing the nature of the suit land and is not introducing a new case and no prejudice shall be caused to the defendants if amendment is allowed for settling all the issues and proper adjudication between the parties. The proposed amendment cannot be termed as withdrawal of admission in plaint. Accordingly, the amendment petition dated 28.04.2015 filed on behalf of plaintiff / petitioner is liable to be allowed and the same stands allowed. The petitioner is permitted to amend the plaint accordingly within four weeks of receiving / production of this judgment in the learned Court below.

12. In view of the aforesaid, this Civil Miscellaneous Application is allowed. The stay order granted by this Court vide order dated 11-10-2018 is vacated.

(Sunil Dutta Mishra, J)

saaurabhkr/-

AFR/NAFR	NAFR
CAV DATE	26.06.2023
Uploading Date	11.07.2023.
Transmission Date	

