

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.504 of 2022

1. Kashi Choudhary @ Kashi Nath Chaudhari.
2. Banaras Choudhary @ Banaras Yadav.
3. Balram Choudhary @ Balram Yadav.
All sons of late Laljee Choudhari.
4. Dharmendra Yadav, son of late Rambachan Choudhary.
5. Goudi Devi.
6. Meena Devi.
7. Binda Devi.
All 5 to 7 daughter of late Rambachan Choudhary.
8. Dhanmato Devi, Daughter of Late laljee Choudhary.
9. Ram Sundar Choudhary @ Ram Sundar Yadav, Son of Bhadai Choudhary.
All resident of Village- Balli Tola Hatwa, P.S.- Hussainganj, District- Siwan.

... .. Petitioners

Versus

1. Shambhu Nath Chaudhary.
2. Jhuman Choudhary.
3. Upendra Choudhary.
4. Satendra Choudhary
All sons of late Baidyanath Choudhary.
5. Lilawati Devi.
6. Shanti Devi.
7. Suganti Devi.
All 5 to 7 daughters of late Baidyanth Choudhary.
8. Mosmat Draupadi Kunwar Wife of Late Sukan Chaudhary.
9. Rameshwar Yadav.
10. Vidya Yadav.
11. Krishna Yadav.
All 9 to 11 sons of late Sukath Choudhary.
12. Savita Devi.
13. Geeta Devi.
14. Mala Devi.
All 12 to 14 daughters of late Sukath Choudhary.
15. Kailash Yadav.
16. Sri Ram Yadav.
17. Jairam Yadav.
All 15 to 17 sons of late Rishavdeo Choudhary.
18. Lagni Devi Daughter of Late Rishideo Choudhary.



19. Mosmat Sanmato Kunwar Daughter of Late Singhasan Yadav.
20. Janak Yadav.
21. Swaminath Yadav.
Both 20 and 21 sons of late Singhasan Yadav.
All resident of Village-Bati Tola hata, P.S.- Husainganj, District-Siwan.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Rajendra Kumar Jain, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 29-08-2023

The present application has been filed challenging the order dated 05.07.2022 passed by learned Additional District & Sessions Judge, IV, Siwan in Title Appeal No.28 of 1988, by which the application dated 20.08.2019 filed by the respondents for amendment in the written statement has been allowed.

2. The petitioners are plaintiffs in the Court below. They have succeeded in the suit for partition. In the Court of appeal, an amendment application has been filed by the respondents seeking amendment in the written statement. The respondents have contended that Exhibit-D, which is a registered partition deed contains mostly *urdu* words and due to the said *urdu* language, which could not be understood properly, some of the submissions were left to be mentioned in the written statement. It has also been submitted that the amendment will not change the nature of the suit as there is no *malafide* reason



for filing the amendment petition and no evidence is required to be led. It has further been submitted that the documents are already on record and certain statements are to be made in connection with the amendment petition and therefore, the written statement may be amended.

3. In the Court below, learned counsel for the plaintiffs had submitted that the amendment petition was filed malafidely after 35 years and the amendment petition cannot be allowed at the appellate stage.

4. Learned counsel for the petitioners has submitted that the amendment petition was filed at the appellate stage after inordinate delay of 35 years and that too without any satisfactory explanation for the inordinate delay but the appellate court without appreciating this aspect has allowed the amendment petition at the appellate stage.

5. Learned counsel for the petitioners further submits that the amendment petition was filed only with a view to cause delay in the disposal of the appeal. In support of his submission, learned counsel for the petitioners relies upon a decision of the Hon'ble Supreme Court in the case of ***Shiv Gopal Sah @ Shiv Gopal Sahu vs. Sita Ram Saraugi & Others*** reported in ***(2007) 14 SCC 120***, more particularly, paragraph



nos.15 and 16 of the aforesaid decision.

6. Considered the submissions of the parties and perused the materials on record including the impugned order. While allowing the amendment petition, the appellate court has held that amendment can be allowed even at the appellate stage. The suit is in respect of partition and every effort should be made to resolve all the disputes relating to partition so that the party may not be dragged to another litigation and the proposed amendment is not going to change the nature of suit or appeal nor the same is going to prejudice the plaintiffs. It has also been held that no additional evidence is required to rebut the documents as the basis of partition i.e. the document of deed of partition is admitted by both the parties.

7. In the opinion of this Court, there is no illegality in the impugned order of the appellate court by which the amendment petition has been allowed. The appellate court has rightly held that amendment can be allowed even at the appellate stage if it is *bonafidely* filed and is not going to change the nature of suit.

8. The decision of the Hon'ble Supreme Court in the case of ***Shiv Gopal Sah & Shiv Gopal Sahu vs. Sita Ram Saraugi & Others (Supra)*** relied upon by learned counsel for



the petitioners has no application in the facts of the present case as in the aforesaid decision by way of amendment certain admissions were withdrawn by the parties and therefore, the Hon'ble Supreme Court had interfered in the matter. However, in the present case, the amendments do not change the nature of the suit or appeal and also do not withdraw any admission.

9. In a recent decision, the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.*** Reported in **2022 LiveLaw (SC) 729** has held in paragraph no.70 as follows:-

“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

(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).”*

10. In view of the foregoing reasons, I find no reason to differ with the impugned order of the appellate court by which the amendment petition has been allowed. Accordingly, this application is dismissed. However, the appellate court below is directed to dispose of the appeal within six months from the date of receipt/production of a copy of this order as the apprehension of the petitioners is that the respondents are trying to delay the disposal of the appeal.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	04.09.2023
Transmission Date	N/A

