

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1134 of 2019

Harihar Nath Rai, Son of Late Dudhnath Rai, Resident of Village- Medhuka,
P.O. Sahajitpur, P.S. Baniapur at present Sahajitpur, District- Saran.

... .. Petitioner/s

Versus

1. Most. Devmuni Kuer, Wife of Late Mokhtar Rai, resident of Village- Medhuka, P.O. Sahajitpur, P.S. Baniapur at present Sahajitpur, District- Saran.
2. Madan Rai, Son of Late Mokhtar Rai, resident of Village- Medhuka, P.O. Sahajitpur, P.S. Baniapur at present Sahajitpur, District- Saran.
3. Ranjeet Rai, Son of Late Mokhtar Rai resident of Village- Medhuka, P.O. Sahajitpur, P.S. Baniapur at present Sahajitpur, District- Saran.
4. Nikki Kumari, Daughter of Late Mokhtar Rai, resident of Village- Medhuka, P.O. Sahajitpur, P.S. Baniapur at present Sahajitpur, District- Saran.
- 4.1. Ashirwad Rai, Son of Late Mathura Rai, Resident of Village Medhuka, Pargana-Goa, P.O. Sahajitpur, P.S. Sahajitpur, District-Saran.
5. Chitranjan Rai, Son of Late Sheojee Rai, resident of Village- Harakhpura, P.S. Baniapur, District- Saran.
6. Shakespeare Rai, Son of Late Sheojee Rai, resident of Village- Harakhpura, P.S. Baniapur, District- Saran.
7. Priya Ranjan Rai, Son of Late Sheojee Rai, resident of Village- Harakhpura, P.S. Baniapur, District- Saran.
8. Smt. Dulari Devi @ Dulam Devi, Wife of Surendra Thakur, Resident of Village- Pakari, P.S.- Mashrakh, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate
		Mr. Nagendra Rai, Advocate
		Mr. Navin Nikunj, Advocate
		Mr. Kashalendra Rai, Advocate
For the Respondent/s	:	Mr. J.S. Arora, Sr. Advocate
		Mr. Umesh Kumar Mishra, Advocate



CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 19-06-2023

Heard Mr. Shashi Shekhar Dwivedi, learned Senior counsel appearing for petitioner and Mr. J.S. Arora, learned Senior counsel appearing for respondents.

2. This Civil Misc. Application has been filed under Article 227 of the Constitution of India against the order dated 24.05.2019 passed by learned Additional District Judge-II-Saran in Title Appeal No. 18 of 1997 by which the learned Court below has rejected the amendment petition dated 27.11.2018 filed by the petitioner / appellant.

3. The petitioner was plaintiff in the trial Court who had filed Title Suit bearing Title Suit No. 325 of 1987 in the Court of Sub-Judge-1, Chapra praying for a decree for permanent injunction restraining the defendants from obstructing the plaintiff in joint use and occupation of suit properties or from dispossessing the plaintiff from the same. The original defendant Nos. 1 to 3 (ancestor of respondent 1st set) filed written statement and contested the suit. After completion of trial of the suit, the learned Court of Sub-Judge-2, Chapra dismissed the suit vide judgment and decree dated 21.01.1997. The plaintiff / petitioner has filed Title Appeal bearing Title



Appeal No. 18 of 1997 against the said judgment and decree dated 21.01.1997.

4. The petitioner on 21.07.2017 filed amendment petition. After hearing at length, on consent on behalf of the parties to dispose of the case, the amendment petition dated 21.07.2017 related to amendment of the plaint and its rejoinder filed on behalf of the respondent, the learned Appellate Court vide order dated 18.01.2018 held that if required according to law, the same would be considered at the time of final hearing of appeal.

5. The plaintiff / petitioner filed another amendment petition on 27.11.2018 to amend the plaint which was dismissed vide the impugned order dated 24.05.2019.

6. Learned senior counsel appearing for the petitioner has submitted that the impugned order is perverse and has been passed ignoring that proposed amendment do not cause such prejudice to the respondents which cannot be compensated by costs. Further, it is submitted that the proposed amendments are either clarificatory and explanatory or are correction of clerical / typing error / omission which are required to be corrected for proper adjudication of Title appeal and accordingly the impugned order is liable to be set aside by this Court under its



supervisory jurisdiction. He has further submitted that the proposed amendment is based on the fact that some mortgage deeds in the name of either the petitioner or his grandmother have set-off in sale deed purchased in the name of Mathura Rai which shows joint acquisition. This assertion is recited in the sale deed dated 29.12.1967 executed by Janki Devi to Mathura Rai. He has further submitted that amendment sought is formal in nature, it will not change the nature or character of the plaint and will not prejudice respondents. He has further submitted that it is well settled that delay in filing petition for amendment is no ground of refusal of amendment.

7. Learned senior counsel for the petitioner further submitted that proviso to the Order 6 Rule 17 C.P.C. is not applicable in this case and referred the judgment of Hon'ble Supreme Court in the case of **State Bank of Hyderabad Vs. Town Municipal Council** reported in **(2007) 1 SCC 765** wherein it is clarified that the proviso appended in Order 6 Rule 17 of C.P.C. was added by the Code of Civil Procedure (Amendment) Act, 2002 which came into force with effect from 01.07.2002 and in view of the said provision there cannot be any doubt whatsoever that the suit having been filed in the year 1998, proviso to Order 6 Rule 17 of the Code shall not apply.



8. He has further referred the Judgment of the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited** reported in **AIR 2022 SC 4256** wherein the Hon'ble Supreme Court has summed up the conclusions with respect to amendment of pleadings and it is held therein that "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 suit (iii) the prayer for amendment is *mala fide*, or (iv) by the amendment, the other side loses a valid defence."

9. The further judgment on which much reliance has been placed by learned senior counsel for the petitioner is **Rajesh Kumar Aggarwal and Ors. Vs. K.K. Modi and Ors. (2006) 4 SCC 385**, wherein it was observed:

"15. The object of the rule is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the



Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.”

10. On the other hand, learned senior counsel appearing on behalf of the respondents has submitted that the suit was filed in the year 1987 and appeal was filed in year 1997 by the petitioner. The petitioner started delaying the disposal of the appeal. The argument was advanced on behalf of plaintiff on different dates then the amendment petition on behalf of petitioner has been filed *mala fide* at the time of argument stage in Title Appeal without any explanation of delay. The plaintiff / appellant wants to delete paragraph 14 of the plaint which has been admitted by the defendant / respondent in paragraph 15 of the written statement. The admitted fact cannot be withdrawn. The plaintiff / appellant wants to introduce and add new facts in paragraph 10 of the plaint having no basis and new facts cannot be introduced at the appellate stage. It is further submitted that the proposed amendment will change the nature and character of the suit itself which is not permissible within the purview of Order 6 Rule 17 C.P.C. He has further submitted that the learned Court below has rightly rejected the amendment petition with reasoned order which is legal, requires no interference by this



Court in its supervisory jurisdiction.

11. The Hon'ble Supreme Court in the case of **Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and Others** reported in **(2017) 14 SCC 120** in paragraphs no. 11 and 12 held as follows:

“11. We have gone through the amendment application carefully where we do not find any explanation whatsoever for this towering delay. We would expect some explanation, atleast regarding the delay since the delay was very substantial. The whole amendment application, when carefully scanned, does not show any explanation whatsoever. This negligent complacency on the part of the plaintiffs would not permit them to amend the plaint, more particularly when the claim has, apparently, become barred by time.

12. It is quite true that this Court in a number of decisions, has allowed by way of an amendment even the claims which were barred by time. However, for that there had to be a valid basis made out in the application and first of all there had to be *bona fide* on the part of the plaintiffs and a reasonable explanation for the delay. It is also true that the amendments can be introduced at any stage of the suit, however, when by that amendment an apparently time barred claim is being introduced for the first time, there would have to be some explanation and secondly, the plaintiff would have to show his *bona fides*, particularly because such claims by way of an amendment would have the effect of defeating the rights created in the defendant by lapse of



time. When we see the present facts, it is clear that no such attempt is made by the plaintiffs anywhere more particularly in the amendment application.”

12. From perusal of impugned order, it appears that the learned Court below observed in the impugned order that the litigation is about 32 years old and the plaintiff has got the plaint amended on 11.10.1993 and there is no explanation as to why the amendment has been sought at such a belated stage. By the proposed amendment the plaintiff-appellant wants to add some new facts in the plaint and to delete some admitted facts from the plaint. The plaintiff-appellant has not stated in the amendment petition as to how the proposed amendment is necessary for complete and final adjudication of the matter in dispute in this case. The learned Court below further observed that the delay is very long, unexplained and the amendment petition appears to have been filed *mala fide* for delaying disposal of the appeal and protracting litigation.

13. Having heard the learned senior counsel for the parties and considering the facts and circumstances of the case, in my considered opinion, there is no illegality or irregularity in the impugned order for interference of this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. The impugned order is a reasoned order and this Civil



Misc. application is devoid of merit and liable to be dismissed.
This Civil Misc. application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

ashutosh/-

AFR/NAFR	NAFR
CAV DATE	20.03.2023
Uploading Date	19.06.2023
Transmission Date	

