

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.348 of 2018

Krishna Raman Prasad Sinha @ Krishna Raman Prasad Singh, Son of
Nagendra Prasad Sinha, Resident of Village- Mukundpur Math, Post-
Mukundpur Math, P.S.- Jandaha District- Vaishali, A/P R/o Mohalla-
Chakanwarpur @ Anwarpur (Bagdulhan) Post- Hajipur, P.S.- Town Hajipur,
District- Vaishali.

... ..Petitioner

Versus

1. Ramaraman Prasad Sinha, Son of Nagendra Prasad Singh.
2. Rambha Devi.
3. Kanchan Kumari.
4. Archana Kumari.
5. Nitu Kumari.
6. Priyanka Kumari.

All 3 to 6 daughters of Late Radha Raman Prasad Singh.

7. Vinay Kumar Singh.
8. Vivek Kumar Singh.
9. Vishwaraman Sinha.

All 7 to 9 are sons of Nagendra Prasad Singh.

All above 1 to 9 are resident of Village- Mukundpur, Post- Mukundpur
Math, P.S.- Jandaha, District- Vaishali. A/P resident of Anwarpur
(Bagdulhin) Post- Hajipur, P.S.- Town Hajipur, District- Vaishali.

10. Most. Kanta Devi, Wife of Late Parshuram Singh, R/o Village- Mirjapur,
P.S.- Garkha, District- Saran.
11. Smt. Manju Devi, Wife of Sri Vijendra Prasad Singh, R/o Chamunian, P.S.-
Nawgachhiya, District- Bhagalpur.
12. Smt. Radha Sinha, Wife of Rama Raman Prasad Sinha, Resident of Village
Post- Mukundpur Math, P.S.- Jandaha, District- Vaishali A/P resident of
Anwarpur (Bagdulhan) Post- Hajipur, P.S.- Town Hajipur, District- Vaishali.

... ..Respondents

Appearance :



For the Petitioner/s : Mr. Abhishek Anand, Advocate
Ms. Madhuri Kumari, Advocate
Mr. Anuj Kumar, Advocate
For the Respondent/s : Mr. Bikas Kumar Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 12-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 21.04.2016 passed by Civil Judge (Senior Division)-X, Vaishali at Hajipur whereby and whereunder the amendment petition dated 14.08.2014 filed by the plaintiff/petitioner has been rejected.

3. The brief facts of the case are that the petitioner/plaintiff filed Partition Suit No. 210/2000 for declaration 1/6 share of plaintiff/petitioner in schedule-2 property and declaration of gift deed dated 19.04.1986 executed by Smt. Parvati Devi in favour of Raman Prasad Sinha, not to be binding upon the plaintiff and same is invalid. The defendants on notice appeared and filed their written statement and issues were framed and two witnesses have been examined on behalf of plaintiff/petitioner. The petitioner claimed that being the junior member of family he has no knowledge about the entire property of the joint family and the



documents is lying with the defendants which he mentioned in the plaint. When the plaintiff/petitioner came to know about the details of some more joint family property which was not mentioned in the plaint, he obtained the document with regard to that property and filed a petition on 14.08.2014 for amendment/addition of the property mentioned in the petition, in the foot of schedule-2. After hearing the parties, the said petition of the plaintiff/petitioner was dismissed.

4. Learned counsel for the petitioner submits that the learned Court below failed to appreciate that the amendment sought for will not change the nature of the case. In the main plaint it is already mentioned that the documents with regard to joint family property is/was with the defendants, in such situation the plaintiff/petitioner being the junior member, having no knowledge of entire joint family property. In the plaint, it is specifically pleaded that the suit land and house on the same had been purchased and constructed the house on the suit land by defendant No. 1 from the joint family fund and in the same plaintiff and defendants are living jointly but defendant No. 2 started saying the same property as her personal property on the basis of forged gift and refused for partition, hence the plaintiff/ petitioner filed this suit. The prayer must be read with pleading and the substance of



the suit is partition of suit property which is clear from the plaint itself. Further, he has submitted that the amendment sought for is not barred by law of limitation and is *bona fide* which is necessary for proper and effective adjudication of the case and would cause no irreparable prejudice to other side if allowed and refusing amendment lead to multiple litigation. Lastly, he has submitted that suit is of year 2000 in which the proviso inserted by Civil Procedure Code (Amendment) Act, 2002 is not applicable.

5. On the other hand, learned counsel for the respondents submits that the impugned order does not suffer from any legal or jurisdictional error and has been passed considering the material on record and facts and circumstances of the case and is not required for interference by this Court under its supervisory jurisdiction. The amendment petition dated 14.08.2014 to add the ancestral properties as subject matter of the suit is against the proviso to Order 6 Rule 17 which bars such petitions after commencement of trial unless and until the Court come to conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The plaintiff/petitioner has adopted his lingering tendency instead of examining himself as 1st witness in terms of Order 18 Rule 3A CPC examined two witnesses mostly of formal nature.



6. He has further submitted that petitioner filed a declaratory suit under the garb of Partition Suit No. 210 of 2000 for the partition of the house standing on the suit land impeading father as defendant no. 1 and other brothers on the basis of unfounded allegations. It is submitted that the suit property is self acquired stridhan property of respondents no. 12 although there is no unity of title and unity of possession in regard to the suit land has become infructuous in view of the fact that a separate partition suit for the partition of joint family properties has been filed by respondent no. 1.

7. The Hon'ble Supreme Court in case of **Ram Sarup Gupta (Dead) by LRs Vs. Bishun Narain Inter College and Others.** reported in (1987) 2 SCC 555 observed that the object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleading however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the Court to ascertain the substance of the



pleadings to determine the question. It is not desirable to place undue emphasis on form, instead of substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the Court must find out whether in substance the parties knew the case and the issue upon which they went to trial.

8. In **Rajesh Kumar Aggarwal and Others Vs. K. K. Modi and Others** reported in (2006) 4 SCC 385, the Hon'ble Supreme Court observed that the object of the Rule 17 of Order 6 CPC 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. It is further observed that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer of amendment.



9. The Hon'ble Supreme Court in **Revajeetu Builders and Developers Versus Narayanaswamy and Sons and Others** reported in (2009) 10 SCC 84 in paragraph 63 reiterated principles/factors to be taken into consideration while dealing with applications for amendments which are as under:-

“63. On critically analysis both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application of amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) 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 6 Rule 17. These are only illustrative and not exhaustive”

10. Learned counsel for the respondent has relied on paragraph 13 of the judgment of the Hon'ble Supreme Court in **Jai Singh Versus Municipal Corporation of Delhi 2010 (e) (PLJR-SC 48884); (2010 (9) SCC 385)** which is as under:-



“13 Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It can not be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.”



11. He further referred and relied upon paragraph 8 of the judgment in **Kokkanda B. Poondacha Versus K. D. Ganapathi, 2011 (e) PLJR-SC-49509; (2011 (12) SCC 600)** which is as under:-

“8. We have considered the respective submissions. We shall first consider the question whether the High Court could interfere with the order of the trial Court without considering the question whether the said order was vitiated due to want of jurisdiction or the trial Court had exceeded its jurisdiction in deciding the application of the respondents and the order passed by it has resulted in failure of justice. In Surya Dev Rai's case (supra), the two Judge Bench, after detailed analysis of the various precedents on the scope of the High Court's powers under Articles 226 and 227 of the Constitution culled out nine propositions including the following:-

“(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the



subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (I) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.”

12. It is primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. The purpose and object of Order VI Rule 17 of CPC is to allow either party to alter or amend his pleading 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. It is well settled that Courts must not refuse *bona fide*, legitimate, honest and necessary amendments and should not permit *mala fide*, worthless and/or dishonest amendment. The decision on application made under Order VI Rule 17 is a very judicial exercise and the said exercise should never be undertaken in a casual manner. The Courts have



very wide discretion which must be exercised judiciously and the Court must not refuse *bona fide*, legitimate and necessary amendments. It is well settled that the delay in bringing the amendment itself, is no ground to refuse the amendment when the proposed amendment is not changing the nature of suit and is not introducing a new case and is necessary for settling all the issues and proper adjudication of the case between the parties.

13. Applying the aforesaid parameters to the present case and in the light of discussion of facts and law, in my opinion, the amendment sought ought to have been allowed by the trial Court. Accordingly, the impugned order is set aside and this Civil Miscellaneous Application is allowed.

14. The liberty is given to the respondents to file additional written statement, if required, in view of the amendment allowed.

15. Since, the suit is of the year 2000, the Court below is directed to expedite the disposal of the suit and both the parties shall cooperate to the learned Court below in early disposal of the suit. The learned trial Court shall not give any unnecessary adjournment to any party.



16. The necessary amendment be carried out within a period of six weeks from the date on which the order is received / produced before the trial Court.

17. The stay of proceedings of Partition Suit No. 210 of 2000 vide order dated 25.04.2018 is vacated. Pending interlocutory application, if any, stands disposed of.

(Sunil Dutta Mishra, J)

Anand Kr.

AFR/NAFR	AFR
CAV DATE	03.07.2023
Uploading Date	12.07.2023
Transmission Date	

