

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1991 of 2017**

---

- 1.1. Phuliya Devi, wife of Late Ramchandra Yadav.
- 1.2. Kari Devi, W/o Late Ramchandra Yadav.
- 1.3. Runa Devi.
- 1.4. Poonam Devi  
Both daughters of Late Ramchandra Yadav.
- 1.5. Sitesh Kumar Yadav.
- 1.6. Nitesh Kumar Yadav  
Both sons of late Ramchandra Yadav  
all resident of village - Kalna, Ward No. 5, P.O. and P.S. Basopatti,  
District- Madhubani.
2. Maheshwar Yadav
3. Ram Balak Yadav.  
Both 2 & 3 sons of late Chaudhary Yadav.  
All Resident of Village- Harlakhi Tola, Ranipatti, P.O.- Harlakhi, P.S.  
Harlakhi, District- Madhubani.

... .. Petitioners

Versus

1. Anatar Devi W/o Ganpat Yadav
2. Binod Yadav S/o Late Ganpat Yadav.  
Both are resident of Village-Kalna, P.S.-Harlakhi, District-  
Madhubani.
3. Paltu Yadav.
4. Umesh Yadav  
Both sons of Late Satya Yadav and resident of Village and P.O.-  
Basopatti, P.S. Harlakhi, District- Madhubani.
5. Mithilesh Yadav S/o Binda Yadav Resident of Village- Mauzapatti, P.O.  
Bisaul, P.S.- Harlakhi, District- Madhubani.

... .. Respondents

---

**Appearance :**

For the Petitioners : Mr. Ratanakar Jha, Advocate  
For the Respondents : Mr. J.S. Arora, Sr. Advocate

---

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

6      04-09-2023                      In this case, the petitioners are challenging the  
order dated 14.06.2017 passed by learned Sub Judge, Benipatti



in P.S. Case No.09 of 2005, by which the learned Sub Judge has dismissed the amendment petition filed by the petitioners.

2. Learned counsel for the petitioners submits that the learned Sub Judge while rejecting the amendment petition has not considered the fact that proposed amendment do not change the nature of the suit. He also submits that the learned Sub Judge has also not considered the fact that proposed amendment was necessary for determining the real question in controversy between the parties. Therefore, this Court may quash the impugned order and allow the amendment petition filed by the petitioners in the Court below.

3. In support of his submissions, learned counsel for the petitioner has relied upon a recent decision of the Hon'ble Supreme Court rendered in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.*** reported in ***AIR 2022 SC 4256***.

4. Learned senior counsel for the respondents submits that in the Court below the evidence of both the parties has been closed and the amendment being sought by the petitioners is at the last stage of the case just to delay the disposal of the case and therefore, the Court below has rightly dismissed the amendment petition filed by the petitioners.



5. I have considered the rival submissions of the parties and also perused the materials on record including the decision of the Hon'ble Supreme Court rendered in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr. (supra)***. Paragraph no.70 of the aforesaid decision is the conclusion of the Hon'ble Supreme Court in the matter, which reads as under:-

*“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 negated.*
- (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).” s*

6. In the present case, it is an admitted position that the parties have led their evidences and thereafter the application for amendment has been filed. In the above decision, the Hon’ble Supreme Court has held that amendment should not be allowed at a belated stage. I find that the amendment petition filed in the Court below is at the fag end of the case, which should not be allowed and the Court below has rightly rejected the amendment petition.

7. In view of the above, this application is dismissed.

**(Sandeep Kumar, J)**

pawan/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

