

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.43 of 2023

1. Shamim Iqbal, aged about 59 year Male.
2. Afroz Alam, aged about 47 year Male.
3. Qaisar Belal @ Kaisar Belal, aged about 52 years Male.
4. Firoz Alam, aged about 42 years, Male.
5. Mustfiz Kamal @ M. Kamal Ansari, aged about 57 years, Male.
All sons of Late Nesar Ahmad, Resident of Mohalla - Mewati Tola, Sasaram,
Police Station - Sasaram Town, District - Rohtas.
6. Sitara Begum, aged about 80 years, (Female), Wife of Muzzafar Hussain
and daughter of Late Abdul Mannan, resident of Mohalla - Bara Shekhpura,
Police Station - Sasaram Town, District - Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Collector, Rohtas at Sasaram.
2. Anchal Adhikari, Sasaram, At and Post Office and Police Station - Sasaram,
District – Rohtas.
3. Nezam Alam, aged about 75 years, Male Son of Late Abdul Mannan,
Resident of Mohalla - Mewati Tola Sasaram, Post Office - Sasaram, Police
Station - Sasaram Town, District - Rohtas.
4. Talat Jahan, aged about 54 years, Female Wife of Late Khwaja Safdar
Nezami.
5. Khwaja Ashar Nezami, aged about 27 years, Male Son of Late Khwaja
Safdar Nezami.
6. Khwaja Faiz Nezami, aged about 22 years, Male Son of Late Khwaja Safdar
Nezami.
7. Khwaja Anzar Nezami, aged about 19 years, Male Son of Late Khwaja
Safdar Nezami. Respondent No. 4 to 7 are resident of Mohalla - Sonar Toli,
Post Office - Sasaram, Police Station - Sasaram (T), District – Rohtas.
8. Shahid Iqbal, aged about 50 years, Male.
9. Shakir Iqbal, aged about 45 years, Male.
Both Sons of Late Iqbal Hussain, Resident of Mohalla - Sonar Toli, Post
Office - Sasaram, Police Station - Sasaram (T), District - Rohtas.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh, Advocate
For the State : Mr. Sajid Salim Khan, SC 25
Mr. Arif Daula Siddique, AC to SC 25
For the Respondent/s : Mr. Jitendra Prasad Singh, Advocate with
Mr. Rajeev Kumar, Advocate and
Ms. Sripriya Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 05-07-2023

Heard learned counsel for the petitioners, learned counsel for the appearing respondents and learned counsel for the State.

2. This Civil Miscellaneous Application has been filed against the order dated 19.11.2022 passed by the learned Sub-Judge- II, Sasaram, Rohtas in Title Suit No. 417 of 2014 whereby and whereunder the learned Sub-Judge II, Sasaram, Rohtas has been pleased to allow the amendment petition filed on behalf of the plaintiffs/respondent nos.3 to 7 under Order 6 Rule 17 of the CPC.

3. The brief facts of the case are that plaintiffs/respondent nos. 3 to 7 filed suit bearing Title Suit No. 417 of 2014 in the Court of learned Sub-Judge 1st, Sasaram for declaration of suit land as raiyati land of the plaintiffs and defendants have nothing to do save and except to realize the rent. On appearance defendant nos. 1 and 2 filed written statement on



15.05.2015 and the intervenor petition on behalf of petitioners was allowed on 04.01.2018. The issues were settled on 15.09.2022. The plaintiffs filed a petition on 18.10.2022 under Order 6 Rule 17 CPC for amendment in plaint which has been allowed by impugned order dated 19.11.2022.

4. Learned counsel for the petitioners submits that the amendment petition has been filed with delay after commencement of trial as the plaintiff's witness (PW-1) has been examined in part. The learned trial Court in impugned order has not discussed with regard to its satisfaction that in spite of due diligence exercised by the plaintiffs the fact could not be brought on record earlier in view of requirement of proviso to Order VI Rule 17 CPC. The plaintiffs by amendment bring the new case by changing nature of the suit causing prejudice to the petitioners.

5. Per contra, learned counsel for respondents submits that amendment of plaint is formal in nature and there is no change in cause of action and it is essential for proper adjudication of suit and due to amendment in plaint there is no change in nature of suit and the suit is in initial stage.

6. The purpose and object of Order VI Rule 17 of CPC is to allow either party to alter or amend his pleading in such a manner and on such terms as may be just. Such amendment



seeking determination of real question of controversy between the parties shall be permitted to made. It is settled law that delay in bringing the amendment itself, is no ground to refuse the amendment if the proposed amendment is necessary for just decision of the case. The Courts must not refuse *bona fide*, legitimate, honest and necessary amendments.

7. The Hon'ble Supreme Court in the case of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another (2022 SCC OnLine 1128)** summarized the guiding principles for deciding an application under Order 6 Rule 17 CPC. It is observed that where the amendment changes the nature of suit or cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment be disallowed.

8. Heard learned counsel for the parties and perused the material on record.

9. In the present case the learned trial Court found that by the proposed amendment the nature of suit would not change and the same is essential for proper determination of controversy in the suit.

10. In view of the aforesaid facts and circumstances and the legal provisions stated above, in my considered opinion, there



is no jurisdictional error or illegality in the impugned order and no interference is required by this Court under its supervisory jurisdiction under Article 227 of the Constitution of India. The application is devoid of merit is liable to be dismissed.

11. This Civil Miscellaneous Application is accordingly, dismissed. There shall be no order as to costs.

12. Both the parties are directed to cooperate in the trial Court in expeditious disposal of the suit and the learned trial Court shall not grant any unnecessary adjournment to the party in the suit.

(Sunil Dutta Mishra, J)

Anand Kr.

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

