

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1877 of 2017

1. Shyam Sunder Upadhyay Son of Sheo Balak Upadhyay Resident of Village-Bhataura, P.S.-Fatehpur, District- Gaya.
2. Gaya Datta Upadhyay, Son of Sheo Balak Upadhyay Resident of Village-Bhataura, P.S.-Fatehpur, District- Gaya.
3. Jaya Datta Upadhyay, Son of Sheo Balak Upadhyay Resident of Village-Bhataura, P.S.-Fatehpur, District- Gaya.
4. Satendra Upadhyay, Son of Sheo Balak Upadhyay Resident of Village-Bhataura, P.S.-Fatehpur, District- Gaya.

... .. Petitioner/s

Versus

- 1.1. Mostt. Manja Devi Wife of Late Ramanugrah Upadhyay Resident of Village- Bhetaura, P.O.- Bahsa Pipra, P.S.-Fatehpur, District- Gaya.
- 1.2. Narmadeshwar Upadhyay Son of Late Ramanugrah Upadhyay Resident of Village- Bhetaura, P.O.- Bahsa Pipra, P.S.-Fatehpur, District- Gaya.
- 1.3. Nageshwar Upadhyay Son of Late Ramanugrah Upadhyay Resident of Village- Bhetaura, P.O.- Bahsa Pipra, P.S.-Fatehpur, District- Gaya.
- 1.4. Vinay Upadhyay Son of Late Ramanugrah Upadhyay Resident of Village-Bhetaura, P.O.- Bahsa Pipra, P.S.-Fatehpur, District- Gaya.
- 1.5. Sudhir Upadhyay Son of Late Ramanugrah Upadhyay Resident of Village-Bhetaura, P.O.- Bahsa Pipra, P.S.-Fatehpur, District- Gaya.
- 1.6. Bhushan Upadhyay Son of Late Ramanugrah Upadhyay Resident of Village-Bhetaura, P.O.- Bahsa Pipra, P.S.-Fatehpur, District- Gaya.
- 1.7. Pramod Upadhyay Son of Late Ramanugrah Upadhyay Resident of Village-Bhetaura, P.O.- Bahsa Pipra, P.S.-Fatehpur, District- Gaya.
- 1.8. Subodh Upadhyay Son of Late Ramanugrah Upadhyay Resident of Village-Bhetaura, P.O.- Bahsa Pipra, P.S.-Fatehpur, District- Gaya.
- 1.9. Smt. Manju Devi Wife of Rajdeo Mishra, Daughter of Late Ramanugrah Upadhyay Resident of Village- Siripur, P.O.- Siripur, P.S.- Khizarsarai, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigendra Kumar, Advocate
For the Respondent/s	:	Mr. Mithlesh Kumar Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 14-11-2024

Heard learned counsel for the parties and I intend to

dispose of the petition at the stage of admission itself.

2. The present petition has been filed for quashing the order dated 08.09.2017 by learned Sub Judge IVth Gaya, in Title Suit No. 25/11/282/10 whereby and whereunder the learned Sub Judge allowed the petition of the defendant/respondent under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”).

3. Learned Counsel for the petitioners submits that the petitioners are the plaintiffs and have filed title suit seeking the relief that right, title and interest of the plaintiff in this suit land be declared apart from other reliefs. The original defendant Sheo Balak Upadhyay appeared and filed a written statement and the matter proceeded and while it was at the stage of arguments, an amendment application was filed on behalf of defendants on 18.04.2017 under Order 6 Rule 17 of the Code for making amendments in his written statement. A rejoinder was filed by the plaintiffs on 09.05.2017. The learned trial court vide Order dated 08.09.2017 allowed the amendment petition and the said Order has been challenged in the present civil miscellaneous petition.

4. The learned counsel for the petitioners submits that the impugned order is not sustainable as the amendments sought

are hit by the proviso to Order 6 Rule 17 of the Code. The amendment was sought at the fag end of the trial and no explanation has come forward from the defendants/respondents to show that despite due diligence they could not have sought the amendment earlier in time and prior to commencement of the trial. Further, the learned trial court did not consider the fact that by the amendments the defendant has taken back the admission made in the written statement and a valued right accrued to the plaintiffs. The defendant wants to withdraw the admission which the defendant specifically admitted in paragraph 7 and 12 of his written statement. By these admissions, the vested right has been created in favour of the plaintiffs. The same could not be taken back by allowing amendments in his written statement. The learned Counsel further submits that the only reason for moving the amendment application was that due to some mechanical and technical typing errors, the defendant was advised to amend the written statement and merely on this ground the amendment petition was allowed. The learned counsel relied on the decision of this court in the case of *Ramayan Mahato and Anr. Vs. Mahanth Bhagwan Das* reported in *2007 (4) P.L.J.R. 293* wherein the learned Single Judge held that amendments of written statement

cannot be allowed if it seeks to displace the plaintiff from admission made in the written statement. The learned Single Judge held that in a case in which the admission made is sought to be withdrawn, same is not fit to be allowed. The learned trial Court did not consider these facts and by a cryptic order allowed the amendment application which could not be sustained.

5. Learned Counsel appearing on behalf of the defendants/respondents vehemently contends that there is no infirmity in the impugned order and it does not need any interference. The learned counsel further submits that though it appears the defendants want to withdraw these admissions but the facts contrary to the admission in paragraph 7 has been stated in paragraph no. 8, 9 and 11. The defendant has also filed a partition suit for his suit property. In this background of the facts, the amendments have been sought. The learned Counsel has referred to the decision of Punjab and Haryana High Court in the case of *Amar Singh Vs. Nirmal Singh and Anr.* reported in **2017 (1) Civil CR 59 (P&H)** wherein learned Single Judge held that the amendments can be brought at any stage of the trial if they do not change the nature of the suit and are necessary for determination of the real question in controversy. Thus, the learned counsel submits that there is no merit in the present civil

miscellaneous petition and the same be dismissed.

6. I have given my thoughtful consideration to the rival submission of the parties and perused this record. Order 6 Rule 17 of the Code reads as under:-

“Amendment of Pleadings: The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The reading of the provision shows the amendments could be allowed even at later stage of trial if due diligence is shown for not bringing the amendment at earlier stage of the suit. However, from the amendment application, it is apparent that no cogent reason have been given showing due diligence of the defendant respondent for not bringing the amendment earlier and the impugned order is also silent on this fact.

7. The Hon’ble Supreme Court in the case of **Baldev Singh and Ors. Vs. Manohar Singh & Ors.** reported in **2006(6) SCC 498** held that inconsistent pleas can be raised by

defendants in the written statement although the same may not be permissible in the case of plaintiff.

At the same time in the case of ***M/s. Modi Spinning & Weaving Mills Co. Ltd. and Anr. Vs. Mr. Ladha Ram & Co.*** reported in ***(1976) 4 SCC 320*** the Hon'ble Supreme Court held in paragraph 10 as under :-

“It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial Court.”

8. In the backdrop of the authorities, the facts of the present case needs to be considered. The defendant has sought amendment in paragraph 7 of the written statement which reads as under :-

“That statement made in para 4, 5, 6 and 7 of the plaint is true and accepted.”

The plaintiff has sought amendment in the following manner:

“That statement made in para 4,5,6 and 7 of the plaint is neither true not accepted.”

Similarly, the amendment has been sought in first line of paragraph 12 of the written statement which reads as under:-

“That statement made in para 9 and 10 of the plaint are true”

After amendment in first line of paragraph 12, it would read as under:

“That statement made in para 9 and 10 of the plaint are not true.”

Evidently, there is specific admission of the defendant of the contention of the plaintiff as made in paragraph 4, 5, 6, 7, 9 and 10 of the plaint. The defendants cannot be allowed to withdraw these admissions. Another amendment has been sought in paragraph 14 but the same appears to be formal in nature but has been sought at a very belated stage. The perusal of impugned order also shows it is completely silent on the reasons for allowing the amendments and such order is itself bad in the eye of law.

9. In the light of discussion made hereinbefore, I am of the view that the learned trial court has committed error of jurisdiction while passing the impugned order and hence, the impugned order dated 08.09.2017 is set aside.

10. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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