

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.660 of 2017

1. Abdullah Ansari
2. Aslam Hussein Ansari @ Aslam Ansari,
3. Atiullah Ansari,
4. Rahmatullah Ansari, All are sons of Late Tabarak Husein Ansari,
5. Mosmat Mokima Khatoon, wife of Late Tabarak Hussein Ansari, All are residents of Village- Shekhi Chakia, P.O.- Bara Chakia, P.S.- Chakia, District- East Champaran.

... .. Petitioners

Versus

1. Mobarak Hussein Ansari, Son of Late Kifayat Hussein Ansari, Resident of Village- Shekhi Chakia, P.O.- Bara Chakia, P.S.- Chakia, District- East Champaran.
2. Bibi Sajra Khatoon, wife of Amanat Mian, daughter of Late Tabarak Hussein Ansari, Resident of Village- Semra, Post- Kathariya, P.S.- Kalyanpur, District- East Champaran.
3. Bibi Gazla Khatoon, wife of Abdul Khalik, daughter of Late Tabarak Hussein Ansari, Resident of Ramdia, Post- Gavandra, P.S.- Chakia, District- East Champaran.
4. Bibi Tazar Khatoon, wife of Azad, daughter of Late Tabarak Hussein Ansari, Resident of Village- Chainpura Murgiya Tola, P.S.- Devariya, District- Muzaffarpur.
5. Mosmat Amna Khatoon, wife of Late Manuddin Ansari, daughter of Late Kifayat Hussein, Resident of Village- Kuanwa, Post- Kuanwa, P.S.- Chakia, District- East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate Mr. Mohammad Farooq, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 05-10-2024

Present learned counsel for the petitioners. Despite



service of notice, none appeared on behalf of the respondents.

02. Heard learned counsel for the petitioners.

03. The instant petition has been filed for setting aside the order dated 29.09.2016 passed by learned Sub Judge-VI, Motihari in Title Suit No. 32 of 2010, whereby and whereunder the learned Sub Judge has rejected the petition dated 03.08.2016 filed by the defendants/petitioners under Order VI Rule 17 of the Code of Civil Procedure (in short 'the Code') for amendment in the written statement.

04. Learned counsel for the petitioners submits that the petitioners are defendants in Title Suit No. 32 of 2010 which was filed by respondent no. 1. The title suit has been filed by the plaintiff/respondent no. 1 claiming himself to be the son of Kifayat Hussain Ansari who was also having another son, Tabarak Hussain Ansari, and a daughter Amna Khatoon. The petitioners are descendants of Tabarak Hussain Ansari, who died leaving behind his wife, four sons and three daughters. After the death of Kifayat Hussain Ansari in 1983, the property mentioned in Schedule 1 was partitioned between two sons and the daughter described in Schedule 2 to 4, respectively. The plaintiff further claimed that his sister sold her share to him vide sale deed dated 11.08.2006. On the other



hand, defendants stake this claim over property as mentioned in Schedule 3 on the basis of deed of gift dated 27.01.1984 said to be executed by Kifayat Hussain Anari. The plaintiff-respondent no. 1 challenged the said deed of gift to be forged and sought declaration of his title over the suit property. The defendants-petitioners appeared and filed written statement and contested the suit of the plaintiff. When the witnesses were examined on behalf of defendants-petitioners, the petitioners realized the mistake in not mentioning the alias name of Kifayat Hussain Ansari, i.e., 'Kifayat Mian' in their written statement. In order to correct the error, the petitioners filed a petition dated 03.08.2016 under Order VI Rule 17 of the Code to amend paragraph 10 of their written statement to the effect that Kifayat Hussain Ansari was also known as Kifayat Mian. A rejoinder was filed on behalf of the plaintiff. However, the learned trial court vide order 29.09.2016 dismissed the petition on the ground that defendant witness no. 13, namely Abdullah Ansari, in his deposition has stated that Kifayat Hussain Ansari had only one name and therefore, allowing the amendment amounts to withdrawal of admission already made. Learned counsel further submits that the amendment is formal in nature as the name of said Kifayat Hussain Ansari was not changed in any



manner and only the name of common parlance was sought to be brought on record. Therefore, it does not mean that Kifayat Hussain Ansari was having two names. So, there is no admission on this point. Learned counsel further submits that by adding the alias name as Kifayat Mian would not cause any prejudice to the plaintiffs. Learned counsel further submits that requirement of amendment was felt as the documents showing the date of death of Kifayat Hussain Ansari have been filed on record and those document mentioned the name of Kifayat Hussain Ansari as Kifayat Mian. This disputed fact needs to be decided as the defendants are claiming that the death of Kifayat Hussain Ansari occurred in 1994 whereas the plaintiff claims his death in 1983. Learned counsel further submits that the amendment is quite formal in nature and is also required for proper adjudication of the case. Learned counsel has referred to a decision of Hon'ble Supreme Court in the case of ***Dondapati Narayana Reddy Vs. Duggireddy Venkatanarayana Reddy & Ors.*** reported in ***(2001) 8 SCC 115***, wherein the Hon'ble Supreme Court has held that “..... *the defendant-appellant has a right to seek the amendment of his written statement incorporating the plea sought to be introduced by way of proposed amendment. Such a prayer cannot be denied on*



hypertechnical grounds. The amendment should generally, be allowed unless it is shown that permitting the amendment would be unjust and result in prejudice against the opposite site which cannot be compensated by costs or would deprive him of a right which has accrued to him with the lapse of time. Amendment may also be refused, if such a prayer made separately, is shown to be barred by time. Neither the trial court nor the High Court has found the existence of any of the circumstances justifying the rejection of the prayer for amendment of the written statement. Whether or not the amendment is allowed, the trial court is otherwise obliged to decide the validity of the disputed will which is the basis of the suit filed by the plaintiff. We are of the opinion that the courts below were not justified in rejecting the prayer of the defendant seeking amendment of his written statement". Learned counsel further submits no such right could have accrued to the plaintiff which is being sought to be taken out by this amendment. Thus, learned counsel submits that the order passed by the learned trial court is fit to be set aside.

05. I have considered the submission made by learned counsel for the petitioners and perused the record. Order VI Rule 17 reads as under:-



“17. 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.”

It is evident that no amendment could be allowed after trial commences unless the parties bringing the amendment show due diligence to such amendment as the same could not be brought earlier.

06. Now coming back to the facts of the case. Admittedly, the suit has been filed in the year 2010 and it appears the written statement has been filed on 16.05.2011. More than five years thereafter the defendants/petitioners have sought to bring amendment about their ancestor Kifayat Hussain Ansari also known by the name ‘Kifayat Mian’ and



some documents were filed on behalf of the defendants showing the name 'Kifayat Mian'. It is also admitted that while the evidence of defendants was being recorded, this application was filed and it has also come in the impugned order that the petitioner no. 1 while deposing as defendant witness no. 9, stated that Kifayat Hussain Ansari had only one name. In this backdrop of facts, the impugned order is to be analyzed.

07. Apparently, the amendment has been sought after commencement of trial and when the evidence of defendants was being recorded. Nowhere in the application filed for amendment or even in the submission before this Court, there has been any averment to the effect that why the petitioners could not have brought the amendment at the earliest and before the commencement of trial. The proviso to Order 6 Rule-17 of the Code is explicit. It is a mandatory provision and a party seeking amendment needs to satisfy the Court that despite due diligence, the said party could not have raised the matter before the commencement of trial, and the same is clearly lacking in the present matter. The Hon'ble Supreme Court in the case of *Basavaraj v. Indira & Ors.* reported in **(2024) 3 SCC 705**, in Paragraph Nos.-10 & 12 held as under:

“10. The proviso to Order 6 Rule 17CPC provides 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. In the case in hand, this is not even the pleaded case of Respondents 1 and 2 before the trial court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. All what was pleaded was oversight. The same cannot be accepted as a ground to allow any amendment in the pleadings at the fag end of the trial especially when admittedly the facts were in knowledge of Respondents 1 and 2-plaintiffs.

12. This Court in M. Revanna v. Anjanamma [M. Revanna v. Anjanamma, (2019) 4 SCC 332 : (2019) 2 SCC (Civ) 338] opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. Order 6 Rule 17CPC prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier.....”

08. In the light of discussion made here-in-before, I



do not think the reliance placed by the learned counsel on *Dondapati Narayana Reddy* (supra) is of any help since the said decision came prior to amendment in the Code of Civil Procedure in 2002 and hence, I do not find any infirmity in the impugned order dated 29.09.2016 and the same is hereby affirmed.

09. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08-10-2024
Transmission Date	NA

