

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.739 of 2017

Md. Fazlur Rahman Son of Late Sk. Suleman Resident of Mohalla- Pnna Mill Road, Khairadi Tola, Gudarganj, P.O.- Mirjanhat, P.S.- Mojahidpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. Md. Usman Ghani Alias Usman
2. Md. Nasar @ Nasar, Both Sons of Md. Firoz Bakht, Both Resident of Mohalla- Tatarpur, Bijlichak, P.O./P.S.- Tatarpur, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Ghosarvey, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 11-01-2024

Heard learned counsel for the petitioner on the point of admission.

2. The petitioner has filed the instant petition for quashing the order dated 23.02.2017 passed by the learned Munsif-II, (Sadar), Bhagalpur in Title Eviction Suit No. 08 of 2014, whereby the petition dated 17.11.2016 filed by the plaintiffs/respondents under Order 6 Rule 17 of the Code of Civil Procedure for amendment in the plaint has been allowed by the learned Subordinate Court.

3. The case of the parties as it appears from the record is that the plaintiffs/respondents filed Title Eviction Suit No. 08 of 2014 to evict the defendant/petitioner from a shop



having an area of 96 sq ft situated at Bhagwan Mahabir Path under Ward No. 14, Holding No. 41 within the town and district Bhagalpur on the ground of personal necessity. It was further submitted that the suit premises is in dilapidated condition and despite request, the defendant had not vacated the suit premises and for this reason the suit was filed.

4. The defendant/petitioner appeared and filed his written statement and denied the claim of the plaintiffs. The defendant has specifically submitted that the plaintiffs have no requirement of the suit premises and the plaintiffs are in habit of filing false and frivolous eviction suit at the behest of their father in order to harass them. The defendant/petitioner claims that at the time of taking shop on rent, he had paid Rs. 2,00,000/- (Two lakhs) as refundable security amount which was to be refunded at the time of vacation of the suit premises and in order to grab the security amount, the suit has been filed.

5. Thereafter, the issues were framed on 16.12.2015 and the matter proceeded for evidence of the plaintiffs. The plaintiffs filed a petition on 19.02.2016 under Order 20 Rule 5 (*sic*) of the Code of Civil Procedure and again another petition was filed on 26.05.2016 in continuation of the earlier petition to frame one more issue with respect to shop in possession of the



defendant which was ultimately rejected by the learned court below on 09.08.2016. Thereafter, plaintiffs filed another petition for amendment in the plaint on 17.11.2016 stating that the amendment is formal in nature and would not affect the original nature of the suit. A rejoinder was filed by the defendant/petitioner on 07.12.2016 opposing the contention made by the plaintiffs. The learned subordinate court allowed the petition accepting the submission made on behalf of the plaintiffs/respondents with cost of Rs.500/- on the ground that the amendment was formal in nature and would not affect the original nature of the suit.

6. Learned counsel for the petitioner submits that the amendment is not a typographical mistake nor is formal in nature. It was purposely filed with an intention to raise dispute between the brothers of the defendant. Learned counsel further submits that the amendment sought to be brought in the plaint has no relevancy for the purpose of deciding the issue in dispute in this case and adding the subsequent facts by way of amendment should not have been accepted. The plaintiffs tried to introduce an issue in respect of same fact which was rejected by the learned subordinate court and thereafter, the present petition has been filed for amendment. Learned counsel further



submits that by way of amendment averment about the right and title of the defendant/petitioner has been made with regard to some other property which is not the suit property. The learned trial court did not consider the malafide intention of the plaintiffs while allowing the amendment and it further failed to consider that it will seriously prejudice the defendant/petitioner. Learned counsel further submits that the amendment has to be bonafide and should be necessary for just decision of the case but the instant amendment has been filed with malafide intention and for determination of issue which is not relevant for the purpose of eviction suit. On the aforesaid grounds, learned counsel for the petitioner submits that the impugned order is not sustainable and it may be set aside.

7. Perused the records.

8. Admittedly, the petitioner is defendant in an eviction suit which has been filed on the ground of personal necessity. Now by moving amendment petition the plaintiffs/respondents have sought following amendment:-

“That during the pendency of the suit, the defendant has built his own Market Complex containing therein 22 spacious shop rooms all the lying vacant And now the defendant is going to grant tenancy to such person who is ready to pay handsome Salami and higher rent. And thus the defendant has his own a big commercial -cum- residential house at Hussainabad Market



Panna Mill Road besides Market Complex which are lying vacant and rented premises at Tatarpur Market situated at N.H. 80 Bhagalpur Mahabir Path under the control of plaintiffs and other Land Lords. But still the defendant wants to retail the plaintiff's premises."

9. Perusal of amendment petition shows the plaintiffs have sought to bring in pleading the fact about the defendant/petitioner having his own premises as a market complex apart from commercial-cum-residential house. At this stage, it could be said that it is not relevant or has been introduced with malafide intention. The plaintiffs are within their right to bring to the notice of the court of such facts which in their opinion are relevant for the purpose of decision of their eviction suit. The contention of learned counsel for the petitioner that after framing of issue, the plaintiffs tried to introduced new issue which was rejected, is immaterial since in absence of pleading, issue cannot be framed.

10. Under Order 6 Rule 17 of the Code of Civil Procedure provides amendment in pleadings at any stage of the proceedings, if the same might be necessary for the purpose of determining the real questions in controversy between the parties unless it is time barred or amendment changes the nature of the suit or it causes serious prejudice to the other party. Recently, the Hon'ble Supreme Court in the case of *Life*



Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr, reported in ***2022 SCC OnLine SC 1128***, in Paragraph-70, has given certain guidelines to deal with the matter. It 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.”

11. The case of the petitioner is squarely covered by the guidelines in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr.*** (supra)



and is not hit by any of the conditions of Para 70(iv).

12. In view of the aforesaid discussions, I do not find any infirmity in the impugned order as the same has been passed after consideration of all the aspects of the matter and, therefore, the same is affirmed.

13. Hence, I do not find any merit in the instant petition and, accordingly, the same is dismissed.

14. The learned trial court is directed to proceed in the matter expeditiously since the matter has been pending before it since 2014 and the eviction suits are required to be decided in a time bound manner.

15. It goes without saying that allowing the amendment make the defendant entitled for controverting/rebutting the same in appropriate manner under the provisions of law.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	N.A.F.R.
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