

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.88 of 2023

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Bhola Mandal Son of Late Choudhary Mandal Resident of Sitarampur
Pithdauri, Police Station- Sultanganj, District- Bhagalpur at present Rly.
Colony (Dimond Crossing) Dhanbad, Police Station- Bank More, District-
Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

Arjun Mandal Son of Late Choudhary Mandal Resident of Sitarampur
(Pithdauri), Police Station- Sultanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Dr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. Harish Chandra Patel, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 01-08-2024

Heard both the parties.

02. The present petition has been filed under Article
227 of the Constitution of India for setting aside the order dated
15.10.2022 passed by learned Additional District Judge-17,
Bhagalpur in Title Appeal No. 86 of 2019 whereby and
whereunder the learned Appellate Court rejected the amendment
petition filed by the petitioner.

03. Briefly stated the facts of the case are that
petitioner was plaintiff in Title Suit No. 392 of 2003 which was
filed seeking the following reliefs:

“a. The court be pleased to declare that plaintiff
has got perfect right, title interest over the land
in question and record of right is illegal, void,
ultravirous and bad in law and declare that

defendant has got no concern over the land in question.

b. The court further be pleased to hold and declare that exclusive owner has got good title over the land in question and defendant has got no concern and record of right is illegal, void and bad in law.

c. The court further be pleased to hold and declare that land in question is self acquired property of the plaintiff.

d. Costs and other reliefs.”

Respondent was the defendant and is the own brother of the plaintiff. The petitioner and respondent had no ancestral property except some homestead land. The petitioner purchased a plot of land bearing Khata No. 176, Khesra No. 601(P) measuring an area 4 katha 11 dhurs of Mauza Pithdauri by a registered sale deed dated 02.08.1971 and came in its possession. The name of the petitioner was mutated and *jamabandi* was created in his name. On the said land the petitioner constructed a pucca house of six rooms, however, during municipal survey the land was recorded in the name of the petitioner and respondent jointly. The petitioner claimed that respondent, taking advantage of wrong entry in *khatian* wanted to grab the land of the petitioner. The petitioner requested the respondent several times to execute a deed of relinquishment and on his refusal the petitioner filed the title suit. The defendant-respondent appeared but failed to file his written statement and the suit proceeded under Order-8, Rule-10 of the

Code of Civil Procedure (in short “the Code”). However, the respondent contested the suit and cross-examined the witnesses of the plaintiff/petitioner and also adduced evidences. The learned Sub-Judge-VIII, Bhagalpur after hearing the matter and considering the material available on record, decreed the suit in favour of the plaintiff and against the defendant. Being aggrieved and dissatisfied with the said judgment and decree dated 28.06.2019, the defendant/respondent filed Title Appeal No. 86 of 2019 which is pending before the Court of learned Additional District Judge-17, Bhagalpur. During pendency of the title appeal, the petitioner came to know about mistake of typist resulting in insertion of wrong plot no. in the plaint and the petitioner on 22.02.2021 filed an application under Order-6, Rule-17 read with Section 151 of the Code praying therein to amend the plaint seeking the following amendments:

- “(i) That in para-16(a) of the plaint in T.S.No.392/03 after the word new plot the word "1121" be deleted and its place "1125, K, KH, G, GH, Ch be substituted.
- (ii) That in Schedule-'A' of the plaint new plot No.1121 be deleted and its place 1125, K, Kha, G, Gha, Ch be substituted.”

A rejoinder to the amendment petition was filed by the respondent herein. The learned Additional District Judge-17, Bhagalpur *vide* the impugned order 15.10.2022 rejected the amendment petition and the said order has been challenged

before this Court.

04. Learned senior counsel Mr. Rajendra Narain, appearing on behalf of the petitioner has vehemently assailed the impugned order. Mr. Narain, submitted that the learned trial court erred in rejecting the prayer for amendment without considering the fact that the proposed amendment is formal in nature and would not change the nature of the suit and therefore, no prejudice was going to be caused to the other side. Mr. Narain further submitted that so far as addition of new plot numbers are concerned the same has been carved out from old plot no. which was subject matter of the suit with defined boundary. No new fact is being sought to be incorporated through the amendment petition. The First Appellant Court missed the settled proposition of law that if plot number is wrong the boundary will prevail. The learned First Appellate Court wrongly held that if amendment was allowed, the matter would require to be considered afresh. Mr. Narain further submitted that as new plot nos. have been marked for old Khesra No. 601(P), wrong new plot no. has been mentioned in paragraph 16(A) as well as in the Schedule 'A' of the plaint. The correct Plot No. is 1125, but due to typographical error 1121 has been mentioned. Mr. Narain further submitted that the petitioner

has got no concern with Plot No. 1121 and mistake committed is *bona fide* mistake and amendment sought for its correction is formal in nature. Old Plot No. 601(P) bifurcated into new plots i.e., Plot No. 1121 as well as 1125 K, Kh, G, Gh, Ch since Plot No. 601(P) was a big plot and petitioner has purchased only 4 katha 11 dhurs out of the said plot. The land purchased by the petitioner corresponds the Plot No. 1125 K, Kh, G, Gh, Ch and the petitioner has got no concern with Plot No. 1121. Thus, the learned senior counsel submitted that the order of the learned First Appellate Court is not sustainable and the same be set aside and the petition of the petitioner for amendment be allowed.

05. Learned counsel appearing on behalf of the respondent vehemently opposed the submission made on behalf of the petitioner. Learned counsel for the respondent further submitted that the petitioner on an earlier occasion filed an amendment petition for amending the Khesra No. during the pendency of the Title Suit No. 392 of 2003 and thus inserted new Khesra No. 1121 having area 4 katha 11 dhurs mentioning that Plot No. 1121 was carved out from old Plot No. 601(P). This amendment was allowed way back on 11.05.2007 and the petitioner has been sleeping over the matter. The proposed

amendment was well within the knowledge of the petitioner since the time of filing of the suit and the petitioner has failed to disclose that in spite of due diligence, he could not bring the proposed amendment. Therefore, the petitioner is not entitled for the same. Learned counsel referred to the decision of Hon'ble Supreme Court in Civil Appeal No. 3917 of 2013 dated 18.04.2013 in ***Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka & Ors.*** reported in ***2013 LawSuit(SC) 336*** in support of his contention. The proposed amendment is quite belated. Learned counsel further submitted that respondent has been residing at the parental house of Mauza Pithdauri, Ward No. 6, Khata No. 527, Plot No. 1125 K, Kh, G, Gh, Ch whereas, petitioner has been residing in Plot No. 1121. Learned counsel further submitted that the petitioner wants to grab the homestead land of the respondent by bringing the amendment as the petitioner is already residing in Plot No. 1121. Moreover, the petitioner has failed to show any paper that new Plot No. 1125 K, Kh, G, Gh, Ch has been carved out from old Plot No. 601(P) which was purchased by the petitioner. Thus, the learned counsel submitted that there is no merit in the present petition and the same be dismissed.

06. I have given my thoughtful consideration to

various aspects of the matter. Admittedly, the suit land is having old Khata No. 176, old Khesra No. 601(P) area 4 katha 11 dhurs of Mauza Pithdauri. Subsequently, the petitioner through an amendment got inserted Plot No. 1121 K, Kh, G, Gh, Ch as the corresponding plot no. of his purchased land which was carved out from old Plot No. 601(P). It is the general principle of amendment that all amendment shall be allowed at any stage which might be necessary for the purpose of determining the real question in controversy between the parties. This general proposition is subject to the bar 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 general rule of amendment is further subject to the condition that the amendment should not be *mala fide*, should not incorporate time barred claim and should not change the nature of the suit. It should not cause prejudice to the other side. The Courts have been liberal in allowing amendment. In the present case, the amendment has been sought to be incorporated at the appellate stage on the ground that it was a typing error and inadvertence on part of the petitioner. The learned First Appellate Court rejected the

amendment on account of fact that the Plot No. 1121 was added by the petitioner by way of an earlier amendment and the decree was issued with regard to Plot No. 1121. Further reason given by the learned First Appellate Court was that the petitioner did not clarify why he wanted to delete Plot No. 1121 which is part of the disputed land and why the petitioner wanted to insert Khesra No. 1125 K, Kh, G, Gh, Ch. The fact remains the amendment sought to be brought about have been moved after much delay and there is blend explanation of inadvertence and mistake of the typist. Even after passing of the decree, the fact was not taken note of by the petitioner which speaks volumes about his casual approach. However, considering the fact that the real controversy between the parties should be adjudicated and if for whatsoever reason, the correct Plot No. has not been mentioned in the original plaint, such amendment in correction of Plot No. could be allowed subject to heavy cost to compensate the respondent for all the trouble which he has been facing since the institution of suit. From the facts of the case it is also apparent that there appears no *prima facie* case of *mala fide* in bringing the amendment. As dispute is over right title and interest on the suit land, change in Plot No. should not cause prejudice to the respondent who failed to file written statement

but was allowed to cross examine the plaintiff’s witnesses and was further allowed to adduce his own evidence. The amendment sought to be incorporated appears to be necessary for adjudication of real controversy between the parties and in my view, the same ought to be allowed subject to cost and other conditions.

07. Therefore, in the light of aforesaid discussion in the matter, order dated 15.10.2022 is set aside and petition dated 22.02.2021 is allowed subject to payment of cost of Rs.50,000/- to be paid to the respondent on the first date before the learned First Appellate Court. This order is subject to further condition that the respondent will be permitted to file his written statement for controverting/rebutting the claim of the plaintiff and would further be allowed to bring on record his evidence and documents in support of his claim, if he so desires.

08. With the aforesaid directions, the present petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	09.07.2024
Uploading Date	02.08.2024
Transmission Date	N/A