

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.601 of 2017**

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Heera Bari Son of Jhulan Bari, R/o Village - Kalubar Baghi, P.O. - Baghai Bazar, P.S. - Kateya, District - Gopalganj.

... .. Petitioner/s

Versus

1. Daya Nand Bari, Son of Late Kishuni Bari, R/o village - Kalubar Baghi, P.O. - Baghai Bazar, P.S. - Kateya, District - Gopalganj.
2. Ramnath Bari son of Sukai Bari, R/o Village - Sahjanma, P.O. and P.S. - Kateya, District - Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha, Advocate
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 08-02-2024

Heard learned counsel for the petitioner on the point of admission and I intend to dispose of this petition at the stage of admission itself.

02. The present petition has been filed for setting aside the order dated 22.11.2016 passed by the learned Sub. Judge-IV, Gopalganj in Title Suit No. 741 of 2012, whereby and whereunder the learned Sub Judge-IV, Gopalganj allowed the application filed by the plaintiff/respondent no. 1 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

03. Learned counsel for the petitioner submits that respondent no. 1 is the plaintiff of Title Suit no. 741 of 2012



wherein the petitioner is defendant no.1 and respondent no. 2 is defendant no.2 before the learned court below. The respondent no.1/plaintiff filed title suit for setting aside the two sale deeds executed by respondent no.2 in favour of the petitioner for the suit property apart from other reliefs. While the evidence for the plaintiff was being recorded, an application under Order 6 Rule 17 was moved by the plaintiff seeking insertion of new paragraph in the plaint after paragraph no. 3 in the form of Paragraph No. 3 (ka). Further amendment has been sought at the end of paragraph no. 10 and the relief portion of the plaint. Learned counsel further submits that the learned trial court after hearing the parties, allowed the amendment petition contending the amendment sought to be formal in nature and not affecting the nature of the suit. Learned counsel further submits that the learned trial court did not consider the fact that the amendment had been moved when the evidence of the plaintiff was being recorded. No explanation has been provided for moving the amendment application after commencement of trial. Learned counsel further submits that the respondent no.1, by moving the amendment application, wants to deny the fact that respondent no. 2 also comes from the family of the respondent no.1 and as the petitioner/defendant no. 1 has been claiming title through the



defendant no.2/respondent no.2, it will cause serious prejudice to the petitioner/defendant no. 1. Learned counsel further submits that the amendment sought to be brought in the plaint goes against the facts of the Title Suit No. 160 of 1965, in which the respondent no. 2 was defendant along with father of respondent no. 1 as being the heirs of common ancestor. So, false and incorrect statement is being introduced in the plaint by way of amendment. By the said amendment, the respondent no. 1 has been trying to extinguish the rights of respondent no.2. Such amendment also goes against the recording of facts by Executive Magistrate in its order dated 16.10.2012 passed in a case filed by the petitioner under Section 145 of the Code of Criminal Procedure. Learned counsel further submits that the learned trial court without appreciating the aforesaid facts, allowed the amendment sought by the respondent no.1 by the impugned order is erroneous, illegal and without jurisdiction.

04. I have gone through the record as well as the amendment being sought on behalf of the respondent no.1. From perusal of the amendment petition before the learned trial court, I am of the view that the facts being introduced appears to be explanation/clarification and there has been no retraction of any admission by the respondent no.1/plaintiff that the



respondent no. 2 belongs to the same family as that of the plaintiff or they are having common ancestor. Even after amendment, there will be no change in the nature of the suit since there is no change in any portion of the relief(s) sought by the plaintiff/respondent no.1 is against sale deed executed by respondent no. 2 in favour of the petitioner. If the plaintiff/respondent no. 1 challenges the genealogy of respondent no.2, the petitioner as well as respondent no. 2 are at liberty to controvert/rebut the same.

05. Therefore, from the above discussion, I find that the order of the learned trial court is proper except the fact it has not given opportunity to the petitioner and respondent no. 2 to rebut the contention of the amendment. The law on the point of amendment at the stage of 'after commencement of trial' is no more *res integra* and the Hon'ble Supreme Court in the case of ***Surender Kumar Sharma v. Makhan Singh***, reported in (2009) **10 SCC 626** has held that amendment can be brought at any stage of the trial even after commencement of trial, if it is necessary for doing full and complete justice between the parties, subject to cost or othersie. Further, 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 following guidelines for allowing the amendment:-

“70. Our final conclusions may be summed up thus:

(i)

(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)

(a),

(b)

(c)

(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 mala fide, or

(iv) by the amendment, the other side



loses a valid defence.

(v)

(vi)

(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)

(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.”

06. Having regard to the discussion made here-in-



before, I am of the considered opinion that the instant petition has got no merit. Hence, the order dated 22.11.2016 passed by the learned Sub. Judge-IV, Gopalganj in Title Suit No. 741 of 2012 allowing the amendment application filed by the plaintiff/respondent no. 1 is hereby affirmed and accordingly the present petition is dismissed.

07. However, the learned trial court will take into consideration the fact that the petitioner/defendant no.1 and respondent no.2/defendant no. 2 are given ample opportunity to controvert/rebut the amendment sought to be brought, if they so desired.

08. This Court has not expressed anything on the merits of the case in any manner and whatever has been observed, is only for the purpose of disposal of the present petition and the learned trial court will not be prejudiced by any of the observations made by this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13-02-2024
Transmission Date	NA

