

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1089 of 2017

Abdullah Khan Son of Abdul Jaleel Khan, resident of Village-Mansa Raut, P.S. Bettiah, Mufassil, P.O.-Barwat Pasrain Mansa Raut and District-West Champaran.

... .. Petitioner/s

Versus

1. Meena Khatoon Widow of Rahmat Khan
2. Reshma Parveen, Daughter of Late Rahmat Khan, Both Resident of Village-Mansa Raut, P.S. Bettiah Mufassil, P.O.-Barwat-Pasram Mause Raut and District-West Champaran.
3. Zahangir Khan, Son of Late Rahmat Khan, Resident of Village-Mansa Raut, P.S.-Bettiah Mufassil, P.O.-Barwat-Pasrain Mansa Raut and District-West Champaran, at Present residing in the rented Building of Rabindra Singh, House no. 173, Mavi Mohalla Tek Khand Okhla Face-1, New delhi.
4. Samsun Nessa, Daughter of Late Rahmat Khan and Wife of Nizamuddin Khan, Resident of Village-Chhawani, near-Western Rai Gunti, P.S.-Bettiah Town, P.O.-Bettiah Town and District-West Champaran.
5. Gazala Parveen, Daughter of Late Rahmat Khan, Resident of Village-Mansa Raut, P.S. Bettiah Mufassil, P.O.-Barwat Pasrain Mansa Raut and District-West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Md. Abu Haidar, Advocate Md. Abyu Shajar, Advocate Mr. Asad Zahidi, Advocate
For the Respondent/s	:	Mr. Bimlesh Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 15-01-2024

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

2. The petitioner, who was defendant 2nd party before the learned trial court, has challenged the order dated



19.05.2017 passed by learned Sub Judge-VII, West Champaran at Bettiah in Title Suit No. 142 of 2011, whereby and whereunder the application filed by the plaintiffs/respondents under Order VI, Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'CPC') has been allowed.

3. The case of the parties, as it appears from the record, is that the plaintiffs/respondents have filed Title Suit No. 142 of 2011 for partition to the extent of 3/10th of their share out of Schedule II land and buildings as also to appoint Pleader Commissioner. At the same time, plaintiffs also sought a direction to allow the plaintiffs to avail the right under Section 4 of the Partition Act with direction to defendant 2nd party to execute sale deed of conveyance in respect of property to the extent of share of his vendor, defendant no. 1. After the appearance of both sides the evidence was closed and argument has also been concluded. Thereafter, an amendment petition was filed by the plaintiffs on 15.05.2017. A rejoinder to the amendment petition was filed by the defendants. The said petition was allowed by the learned trial court which has been assailed in the instant petition.

4. Learned counsel for the petitioner submits that the learned trial court erred while allowing the petition for



amendment. The learned trial court did not take into account the fact that the petition has been filed at much belated stage when the evidence of the parties was closed and argument was already heard and the matter was to be finally decided. The learned trial court also did not take into consideration the fact that there was no explanation for filing amendment petition at so belated stage. Learned counsel further submits that through the amendment, a new case is sought to be made out and basic nature of the suit land is tried to be changed. The amendment is time barred. The amendment would take away the right accrued to the petitioner with passage of time. Thus, the impugned order is not sustainable and the same may be set aside. Learned counsel has relied on a decision in the case of *Shiv Kumari Kuar & Ors. Vs. Anil Bhagat & Ors.* reported in *2023(4) PLJR 146* to stress the point that there was no explanation of due diligence for filing amendment petition at the stage of final argument and further in that case also the mistake of the typist was shown as a reason.

5. The contention of learned counsel for the petitioner has been vehemently opposed by learned counsel appearing on behalf of the respondents. Learned counsel for the respondents submits that only a typographical error was sought to be corrected since in paragraph 3 of the plaint instead of 6 dhurs,



16 dhurs has been mentioned whereas in the Schedule of the plaint only 6 dhurs was mentioned so there was contradiction between the pleading of Schedule of the plaint and the body of the plaint. This contradiction was sought to be removed by filing amendment petition and learned trial court has rightly allowed the same. Learned counsel further submits that on account of delay, a cost of Rs.800/- was imposed upon the plaintiffs and the defendants were also given liberty to file additional written statement so there was no infirmity in the impugned order and hence, the instant petition may be dismissed. Learned counsel has relied on a decision of 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* wherein the Hon'ble Supreme Court has held that 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. In the present case, the defendants have also failed to show how any prejudice was caused to them or injustice would occur on account of allowing the amendment.

6. Perused the records.

7. Order 6 Rule 17 of the CPC 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 amendment sought is time barred or amendment changes the nature of the suit and it causes serious prejudice to the other party. It goes without saying that the amendment can be disallowed if it changes the nature of the suit or amendment is with malafide intention or it affects the right of the other side. The Hon'ble Supreme Court has time and again held that the court should not adopt hyper technical approach in considering the amendment petition.

In the present case the amendment sought to be introduced is with regard to correction in the area of the suit land. It is not that the boundaries of suit property is being changed. Further if at one place in plaint certain area has been mentioned with different boundaries and at another place in the plaint, same position is stated to have different area, such contradictory fact in the plaint may cause confusion and it would not be possible for the trial court to come to a just and proper decision. Further the claim of the petitioner that the amendment would change the nature of the suit, is not sustainable as it is a suit for partition and even after change of the area, the suit will remain a suit for partition. It's nature



would not change. So far as the contention of learned counsel for the petitioner is concerned that the amendment has been sought at a belated stage should not be come in way of adjudication of real controversy between the parties, if the same can be compensated in terms of money so the amendment at a belated stage can also be allowed. In the instant case, the amendment has been allowed subject to cost. In this regard, reference can be made to the decision cited by learned counsel for the respondents in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr*** (*supra*). In its paragraph-70 certain guidelines have been given regarding scope of Order 6 Rule 17 of the CPC and the said paragraph 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.”

8. In the light of law as propounded by the Hon’ble Supreme Court the amendment sought by the plaintiffs cannot be said to hit by Para 70(iv) of the above cited decision and for this reason the reliance placed by the learned counsel for the petitioner on ***Shiv Kumari Kuar*** (*supra*) is of no help.

9. 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. However, the petitioner will have the liberty to rebut the amendment.

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

11. Since it is an old matter, the learned trial court is directed to dispose of the same within six months from the date of receipt/production of a copy of this order.

12. The petitioner/defendant has already been granted



a liberty for filing additional written statement. If such liberty has not been availed till date, the learned trial court may allow the same considering the facts and circumstances of the case.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	18.01.2024
Transmission Date	N.A.

