

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1918 of 2018

1. Ram Ranvijay Pratap Shahi S/o Yadvendra Pratap Shahi Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur
2. Maitray Sahi S/o sri Ram Ranvijay Pratap Sahai Under Guardianship of his father Ram Ranvijay Pratap Shahi. Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur

... .. Petitioner/s

Versus

1. Sri Kaushlendra Pratap Shahi S/o Late Yadvendra Pratap Shahi Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur
2. Sri Ramanuj Pratap Shahi S/o Kaushlendra Pratap Shahi Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur
3. Sri Anjanay S/o Sri Kaushlendra Pratap Shahi Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur
4. Smt. Rita Shahi W/o Late Mithilesh Pratap Shahi Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur
5. Sri Srikant Govind S/o Late Mithilesh Pratap Shahi Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur
6. Smt. Amrita Shahi W/o Late Raghuvir Pratap Shahi Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur
7. Prachi D/o Late Raghuvir Pratap Shahi Resident of Mohalla Amgola Road, Sursand Kothi, P.S. Kazimohammadpur Town and Dist. Muzaffarpur
8. Smt. Rajashri W/o Sri Keshwav Prakash, D/o of Late Raghuvir Pratap Shahi Resident of Village and PO and PS Ghangaur, Dist. Madhubani
9. Sri Keshri Nandan Pratap Shahi S/o Late Yadvendra Pratap Shahi Under Guardianship of his father Residents of B-1/158, Sursand Kothi, Assighat, Varanashi, P.S. Bhelupur, Dist. Varanasi, UP
10. Chandra Chur Pratap Shahi Sri Keshri Nandan Pratap Shahi Residents of B-1/158, Sursand Kothi, Assighat, Varanashi P.S. Belupur, Dist. Varanashi, UP
11. Shivansh Pratap Shahi, (Minor) S/o Sri Keshri Nandan Pratap Shahi Under guardianship of his father. Residents of B-1/158, Sursand Kothi, Assighat, P.S. Belupur, Dist. Varanasi, UP
12. Rambhushan Mishra S/o Sri Rambhushan Mishra Resident of Village and PO and PS Pipra, Dist. Jaleshwar, Nepal
13. Sri Kundan Mishra Sri Rambhushan Mishra Resident of Village and PO and PS Pipra, Dist. Jaleshwar, Nepal



14. Sri Gunjan Mishra S/o Sri Rambhushan Mishra Resident of Village and PO and PS Pipra, Dist. Jaleshwar, Nepal
15. Smt. Rita Singh W/o Sri Rajeev Nandan Singh, D/o Late Yadvendra Pratap Shahi Resident of Village and PO Ratwara, Dist. Muzaffarpur
16. Smt. Madhavi Singh W/o Sri Rohit Kumar, D/o Late Yadvendra Pratap Shahi Resident of Village and PO Malahi, Dist. West Champaran
17. Smt. Gita Shahi W/o Rishikesh Shahi, D/o Late Yadvendra Pratap Shahi Resident of Village and PO Bhaul P.S. Nanpur, Dist. Sitamarhi
18. Smt. Janki Rai W/o Pankaj Rai, D/o Late Yadvendra Pratap Shahi, Resident of Village Bela Vilaspur, P.S. Ramnagar, Dist. West Champaran

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.N.P. Singh, Sr. Advocate Mr. S.P. Singh, Advocate Mr. Kumar Shatveer, Advocate
For the Respondent/s	:	Mr. Bikash Kr. Sharma, Advocate Mrs. Madhuri Kumari, Advocate Mr. Abneesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 04-12-2024

The petitioners have filed the instant petition under Article 227 of the Constitution of India for setting aside the order dated 26.10.2018 passed by the learned Sub Judge-XI, Muzaffarpur in Partition Suit No. 541 of 2016 whereby and whereunder the petition, filed on behalf of the plaintiffs/petitioners under Order VI Rule 17 of the Code of Civil Procedure (in short 'the Code') seeking amendment in their plaint, has been rejected.

2. Briefly stated, the facts of the case as it emerges from the record, are that the petitioners are the plaintiffs in Partition Suit No. 541 of 2016 who claimed 1/5th share in the



suit property described in Schedule-I of the plaint. One Yadvendra Pratap Shahi was common ancestor of the parties to the suit who had five sons and five daughters. Plaintiff no.1, Ram Ranvijay Pratap Shahi, is one of the sons. It appears from the plaint that Yadvendra Pratap Shahi, in his lifetime, mutually partitioned his properties between his sons and himself through a memorandum of partition dated 31.05.1997 and he died on 15.03.2004. After his death, the share of Yadvendra Pratap Shahi came into possession of their legal heirs. The daughters of Yadvendra Pratap Shahi and their descendants left their shares in favour of sons of Yadvendra Pratap Shahi. In this manner, the share of late Yadvendra Pratap Shahi came into joint possession of the all his sons. Further case of the plaintiffs is that grandmother of plaintiff no.1 had gifted some property to defendant no.1, Kaushlendra Pratap Shahi and Yadvendra Pratap Shahi also gifted some property to his son Raghuvir Pratap Shahi. The plaintiffs demanded fresh partition with regard to properties of joint stock which was declined by the defendants. During pendency of the suit, plaintiffs/petitioners filed a petition under Order VI Rule 17 read with Section 151 of the Code for amendment in the plaint on 23.03.2018. The prayer for amendment was resisted by defendant no.6/respondent no.6 who



filed a rejoinder dated 17.05.2018. Now defendant no.6/respondent no.6 Amrita Shahi is the widow of late Raghuvir Pratap Shahi, one of the sons of Yadvendra Pratap Shahi. The said application for amendment was rejected vide order dated 26.10.2018 by the learned trial court which is under challenge before this Court.

3. Learned senior counsel appearing on behalf of the petitioners submitted that the impugned order is not sustainable as the same has been passed ignoring the facts and the law applicable. The amendments sought for is necessary for the purpose of determining the real question in controversy and to meet the ends of justice and the same ought to have been allowed. Learned senior counsel further submitted that amendments sought to be brought in the plaint are formal in nature. The first amendment is with regard to the fact that after death of Yadvendra Pratap Shahi, the memorandum of partition dated 31.05.1997 could not be acted upon and the entire ancestral property including the personal share of Yadvendra Pratap Shahi remained in joint possession of his legal heirs. Learned senior counsel further submitted that on filing of written statement the plaintiffs inquired about the truth behind the alleged deed of gift dated 07.07.1984 executed by



Yadvendra Pratap Shahi in favour of son Raghuvir Pratap Shahi and the claim of title and possession of defendant no.6 over the property of the said gift deed. Subsequent development has also taken place that after death of Yadvendra Pratap Shahi, an agreement was entered into by defendant no.6 and sons of Yadvendra Pratap Shahi and a deed of agreement dated 26.03.2016 was executed wherein defendant no.6 agreed that alleged deed of gift to be treated as formal document having no effect of conferring title and possession to the donee of the gift or his heirs. Learned senior counsel further submitted that the learned trial court wrongly held that the plaintiffs have been trying to challenge a gift deed which is more than thirty years old and the same was hit by limitation. But the learned trial court overlooked the fact that the gift deed was a void and sham document and no limitation would apply. This fact becomes amply clear if antecedent of the land in gift deed is seen. The learned senior counsel further submitted that as the property was joint when the gift deed was executed and Yadvendra Pratap Shahi has no right to alienate the property by way of gift deed. Moreover, subsequently defendant no.6/respondent no.6 admitted in course of family settlement, on 26.03.2016 that the property which was gifted to her husband was a joint family



property but the said gift deed was a formal document and the property was still in possession of joint family. So neither the donee Raghuvir Pratap Shahi nor his wife defendant no.6/respondent no.6 came in exclusive possession of the said property. Hence, challenge to the deed of gift is not time barred as the gift deed never became operative. Learned senior counsel further submitted that it is not correct to say that any admission was made by the plaintiffs and new facts are being incorporated by way of amendments as observed by the learned trial court. The amendment with regard to the gift deed is by way of clarification and there is no change in the nature of the suit as the suit remains a suit for partition. Thus, learned senior counsel submitted that the impugned order has been passed against the provisions of law as well as facts and the same could not be sustained and needs to be set aside.

4. Learned counsel appearing on behalf of respondent no.6 vehemently contended that there is no infirmity in the impugned order and the same needs to be sustained. Learned counsel submitted that the plaintiffs/petitioners have already admitted to the partition in the family in the year 1997. Now the plaintiffs/petitioners want to take back this admission made in paragraph 3 of the plaint by claiming that no partition was ever



effected. Further, the plaintiffs want to challenge the gift deed dated 07.07.1984 which is time barred. The plaintiff no.1 has all along the knowledge about the gift deed and has even stated about the same in paragraph no.8 of his plaint. The learned counsel further submitted that the Hon'ble Supreme Court in a number of cases has held that a time barred claim cannot be introduced by way of amendment and when the plaintiffs have all along been knowing about the execution of the gift deed, they are not permitted to make amendment about a time barred claim. Learned counsel submitted that the third amendment which the plaintiffs want to incorporate in the plaint is with regard to an unregistered deed of agreement dated 26.03.2016 which apparently is a forged and fabricated document and in this connection, a Criminal Case No. 100C of 2017/Trial No. 308 of 2023 has been filed by defendant no.6 against the plaintiff no.1 and others. Learned counsel further submitted that the plaintiffs want to bring entirely a new set of facts in their case and the same is being tried to be introduced after commencement of the trial without showing any due diligence and for this reason the same could not be allowed. Learned counsel further submitted that so far as the property of gift deed is concerned, the admitted owner of the property was Dulhin



Kishori Kunwar who died in the year 1978-79 leaving behind her husband and three sons. All of them inherited 1/4 share in notional partition. As the same was inherited from a female Hindu, it would become the separate property of the sons and would be covered under self-acquired property as defined under Article 228, Page No. 348 of Mulla's Hindu Law, 2010 Edition. Pleased with the help extended by the husband of defendant no.6, his father gifted him some landed property through a registered deed of gift dated 07.07.1984 and put the donee in possession of the same. After acceptance of the gift, the donee came into its exclusive possession and continued the same during his lifetime and thereafter, his wife, defendant no.6 and his two daughters have been continuing in its possession. Learned counsel further submitted that when the partition was made by Yadvendra Pratap Shahi vide memorandum of partition dated 31.05.1997, this gifted property of gift deed dated 07.07.1984 was not made part of that partition deed and it shows the husband of defendant no.6 came into its possession as it was the separate property of Yadvendra Pratap Shahi inherited from his mother and gifted to one of his sons in the year 1984 itself. The name of husband of defendant no.6 and after his death, the name of defendant no.6 came to be mutated in the



Government record and rent receipts are being issued in her name. Thus, learned counsel submitted that there is no infirmity in the impugned order and the same needs to be sustained.

5. I have given my thoughtful consideration to the rival submission of the parties and has also considered the facts and circumstances of the case. Order VI Rule 17 of the Code provides for amendment in pleading and it 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.”

6. Though the amendment could be allowed at any time prior to commencement of the trial in order to determine the real controversy between the parties, if the amendments are sought after commencement of trial, then the person applying



for amendment has to show that despite due diligence he could not have moved the application for amendment prior to commencement of trial. The courts have been liberal in allowing the amendment but there are certain exceptions. A time barred claim cannot be allowed by way of amendment. Similarly, *mala fide* amendments are not to be allowed. An admission by which a person has acquired the valuable right could not be allowed to be withdrawn. The law has been settled by various decisions of the Hon'ble Supreme Court and recently in the case of ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.***, reported in ***2022 SCC OnLine SC 1128***, the Hon'ble Supreme Court summarized the law on the point of amendment in paragraph 70 in the following manner :

“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 mala fide, 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. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)”.

7. Further, in the case of ***L. J. Leach And Company Ltd & Anr. vs. Jardine Skinner And Co.,*** reported in ***AIR 1957 SC 357***, the Hon’ble Supreme Court in paragraph no.16 held as follows :

“16. It is no doubt, true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to



be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice.”

8. Coming back to the facts of the case, admittedly the amendments have been sought at the time of recording of evidence of plaintiffs. It shows the plaintiffs have moved their amendment application after commencement of trial. The perusal of the application for amendment does not show any due diligence on part of the plaintiffs as to why they did not move the amendment earlier in time. More so, when they have been withdrawing from their admitted position that a family partition has already taken place and it was only with regard to certain property that necessitated recording a new partition. Admittedly, in paragraph no.3 of the plaint, the plaintiffs have stated about partition already taking place in the family with regard to the ancestral property in which father of the plaintiff no.1 and his brothers were parties and received their respective shares. The present partition suit has been filed only with regard to claim of the partition against the property left behind by father of plaintiff no.1 and some other properties. Further even if it is taken that the deed of partition of the year 1997 was not registered and no importance could be give to non-mentioning



of the gift deed in the schedule of partition. Yet it would be a fact that what is being sought to be incorporated through amendment is challenge to the gift deed dated 07.07.1984 which at this point of time is certainly time barred in a suit for partition. From perusal of paragraph no.8 of the plaint, it is evident that the plaintiffs were having knowledge of the gift deed in favour of Raghuvir Pratap Shahi when they filed the plaint. If it was within the knowledge of the plaintiffs, the plaintiffs could not subsequently claim ignorance of the same and claim amendment on this ground of their plaint. Similarly, in corporation of facts about agreement of 26.03.2016 could also not be allowed. The plaint of partition suit was affidavited on 17.09.2016 and the agreement of 26.03.2016 is prior to institution of the Partition Suit No. 541 of 2016 and it was signed by plaintiff no.1. The Hon'ble Supreme Court in the case of *Ajendraprasadji N. Pande and Anr. vs. Swami Keshavprakeshdasji & Ors.* reported in *AIR 2007 SC 806*, refused to allow the amendment where no particulars were provided which would satisfy the requirement of law that matters now sought to be introduced by the amendment could not have been raised earlier in respect of due diligence. So there could be no excuse for not bringing this fact into plaint at the



time of its filing.

9. Furthermore, the plaintiffs/petitioners have failed to show that despite due diligence they could not have raised the matter earlier in time. Hence, such amendment will be hit by proviso to Order VI Rule 17 of the Code. The Hon'ble Supreme Court in the case of ***Basavaraj vs. Indira & Ors.*** reported in ***(2024) 3 SCC 705***, has held that the Court should not allow the amendments at belated stages if due diligence has not been shown. In the case of ***Basavaraj*** (supra), the Hon'ble Supreme Court quoted the case of ***M. Revanna vs. Anjanamma*** reported in ***(2019) 4 SCC 332*** and held that Order VI Rule 17 of the Code 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 Hon'ble Supreme Court further held that 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. The Hon'ble Supreme Court refused to allow the amendment as it was found that plaintiffs came to know about the factum sought to be incorporated as amendment in the year of filing of their suit and there was no explanation by them as to why they did not file the application for amendment for 15



years.

10. Thus, in view of the discussion made hereinabove, I am unable to agree with the contention of the learned senior counsel for the petitioners that the impugned order is not sustainable. Even the contention of learned senior counsel that there would be no limitation against the gift deed since it was never acted upon and it was a sham document is not of much significance in the light of the aforesaid discussion.

11. Therefore, having regard to the facts of the case and law applicable, I come to the finding that the amendment application of the plaintiffs/petitioners was rightly rejected and the impugned order dated 26.10.2018 needs no interference and the same is sustained.

12. Finding no merit in the present petition, the same stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	28.10.2024
Uploading Date	04.12.2024
Transmission Date	NA

