

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.298 of 2019

1. Sajjan Singh, Son of Late Jamuna Singh, Residents of Village and P.o. Harpur Jan, P.S. - Mashrakh, District - Saran
2. Jay Mohan Singh, Son of Late Jamuna Singh, Residents of Village and P.O. Harpur Jan, P.S. - Mashrakh, District - Saran
3. Umesh Singh, Son of Late Bachcha Singh, Residents of Village and P.o. Harpur Jan, P.S. - Mashrakh, District - Saran
4. Manjay Singh, Son of Late Bachcha Singh, Residents of Village and P.o. Harpur Jan, P.S. - Mashrakh, District - Saran
5. Sugi Kuar, Wife of Surendra Singh, Resident of Village and P.o. Harpur Jan, P.S. - Mashrakh, District - Saran

... .. Petitioner/s

Versus

1. Bunni Kuar, Wife of Late Rabindra Singh, Resident of Village - Basantpur, P.o. and P.S. - Panapur, District - Saran
2. Pramod Singh Son of Late Rabinda Singh Resident of Village Basantpur, P.O. and P.S. Panapur, District - Saran.
3. Binod Singh Son of Late Rabinda Singh Resident of Village - Basantpur, P.O. and P.S. Panapur, District - Saran
4. Prabhu Singh Son of Late Sital Singh Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran
5. Subash Singh Son of Bachcha Singh Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran
6. Anita Devi Daughter of Late Bachcha Singh Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran
7. Punam Devi Daughter of Late Bachcha Singh Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran
8. Suman Devi Daughter of Late Bachcha Singh Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran
9. Yashoda Devi Wife of Late bachcha Singh Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran
10. Devendra Singh Son of Late Surendra Singh Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran
11. Mukesh Singh Son of Late Surendra Singh Resident of Village and P.O.



Harpur Jan, P.S. Mashrakh, District - Saran

12. Renu Devi Wife of Rinku Singh and daughter of Late Surendra Singh
Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran.
13. Ritu Devi Wife of Late Pappu Singh and daughter of Late Surendra Singh
Resident of Village and P.O. Harpur Jan, P.S. Mashrakh, District - Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate Mr. Kaushalendra Rai, Advocate
For the Respondent/s	:	Mr. Kumar Uday Singh, Advocate Mr. Madanjeet Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 24-06-2024

Heard learned counsel for the petitioners and learned counsel for the respondents 1st set on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed by the petitioners/plaintiffs for quashing the order dated 09.10.2018 passed by the learned Additional District Judge-I, Chapra in Probate Case No. 08 of 2011. In the said case, an amendment petition dated 08.08.2018 has been filed to make certain amendments in the probate petition which was objected by the respondents 1st set who claimed that the probate petition was barred by limitation. The respondents 1st set also objected the amendment petition on the ground of belated filing and also on



the ground that the petition was hit by Section 11 of the Code of Civil Procedure (hereinafter referred to as the 'Code') as a petition with same prayer was earlier filed and withdrawn. Further, challenge was on the points that the facts were known to the petitioners still the amendment was not preferred earlier and merits of the amendments were also challenged. The learned trial court rejected the amendment petition of the petitioners vide order dated 09.10.2018 which is under challenge before this Court.

3. Learned counsel for the petitioners submits that the learned trial court adopted erroneous approach and went into the merits of the case which was not permissible at the stage of deciding the petition of amendment. The learned trial court did not consider the fact that trial is still at the initial stage and the amendment is not going to cause prejudice to any party. Learned counsel further submits that the learned trial court mainly rejected the petition on the ground that except for two petitioners, other petitioners did not put their signatures on the petition for amendment and also on the ground that the amendment petition has been filed belatedly after the issue of limitation was raised by other side in its objection. However, a Division Bench of this Court in the case of ***Bibi Asghari & Anr.***



Vs. Md. Kasim & Ors., reported in ***AIR (38) 1951 Patna 323***, has observed in paragraph no.4 that the court does not lose its jurisdiction if some of the plaintiffs did not present the plaint if the suit was filed with their knowledge and authority. Thus, if some of the plaintiffs sign and verify the petition it would suffice for the purpose of proceeding with the petition. Learned counsel further submits that the amendment is quite formal in nature. One of the amendments is merely explanation for bringing the probate petition so late in time mentioning loss of the certified copy of the original Will being the reason. Another amendment is adding the prayer part in the probate petition since there was an inadvertent omission of the prayer clause in the petition filed for the probate of the Will. Learned counsel further submits that the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Anr.***, reported in ***AIR 2022 SC 4256*** in paragraph no. 70 has given certain guidelines and has held that the amendments are to be liberally allowed unless it is *mala fide* or is time barred or would change the nature of the suit. Learned counsel further submits that the proposed amendments do not change the nature of the suit and have been moved before the commencement of the trial and, hence, the learned trial court



committed an error of jurisdiction in rejecting the amendment petition and passed the impugned order which is not sustainable.

4. Learned counsel appearing on behalf of the respondents 1st set submits that so far as objection with regard to non-signing of the amendment petition by other petitioners is concerned, he does not want to join the issue with learned counsel for the petitioners and agrees to the view that if one or two of the petitioners have put their signatures on their petition, it would be suffice for the purpose. However, learned counsel submits that the petitioners have earlier filed a petition seeking same amendment and same prayer on 21.05.2018 which was fixed for orders on 08.08.2018 but the petitioners withdrew the same in between and for this reason the second amendment petition is barred. Learned counsel further submits that the amendments have been sought to be incorporated to meet out the *lacuna* in the case of the petitioners as pointed out by the respondents in their objection and for this reason the amendment petition was filed and that too after much delay since the probate petition was filed in the year 2011 and the amendment petition has been filed after seven years. Thus, the learned counsel submits that the impugned order is correct and legal and there is no need to interfere with the same. Learned counsel also



submits that in case the amendment petition is allowed, liberty should be given to the respondents 1st set to agitate the issue of limitation in the probate case.

5. Having regard to the facts and circumstances and submissions made on behalf of the parties, admittedly the amendment petition has been filed prior to the stage of fixing the matter for adducing evidence and so technically it can be said that the trial has not commenced and, hence, the amendment would not be hit by Proviso to Order VI rule 17 of the Code. If the plaintiffs wants to bring certain amendment in his plaint, he can do so if the amendments fulfill the provisions under Order VI Rule 17 of the Code which 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. Evidently, amendment could be brought at any



stage of proceeding and even after commencement of trial under certain condition, if it is considered necessary for determining real controversy between the parties. I find that the amendments which have been sought to be incorporated are not of such nature that they would change the nature of the suit and cause grave prejudice to the other side. One of the amendments is merely explanatory and the facts which are already on record and appears to be made to explain the delay in bringing the probate petition which cannot be faulted except for the delay in bringing the said amendments. Further, the prayer part if it has been missing in the probate petition, the same could always be allowed to brought through an amendment. Amendment at this stage should not cause any prejudice to the respondents if the respondents get the opportunity to rebut/controvert the same.

7. In the light of the decision of the Division Bench of this Court in the case of ***Bibi Asghari & Anr.***, (supra), non-signing of the amendment petition by other petitioners is a non-issue. Furthermore, having considered the fact that the amendments do not change the nature of the suit or they do not appear to be *mala fide* or barred by law of limitation or any other law and they appear necessary for the purpose of determining the real question in controversy between the parties



and further considering the guidelines in the case of *Life Insurance Corporation of India* (supra), these amendments could be allowed. However, the amendments have been sought to be incorporated after lapse of seven years of filing of the probate case, the respondents should be adequately compensated in terms of money if the amendments are to be allowed.

8. In the light of discussions made hereinabove and considering the stage of the case before the learned trial court as well as the nature of amendments, the impugned order dated 09.10.2018 passed by the learned Additional District Judge-I, Chapra in Probate Case No. 08 of 2011 is set aside and the application dated 08.08.2018 filed for amendment before the learned trial court is allowed subject to payment of cost of Rs. 10,000/- to the respondents 1st set by the petitioners on the 1st date of hearing before the learned trial court. The other side will be given ample opportunity to rebut/controvert the claim of the petitioners/plaintiffs sought to be brought through amendment by way of filing amended written statement/additional written statement.

9. Accordingly, the instant petition stands allowed.

10. It goes without saying that the parties have all the rights to agitate all issues including issue of limitation before the



learned trial court as this Court has not expressed any opinion 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)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.06.2024
Transmission Date	NA

