

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1334 of 2017

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Nand Kishore Sah @ Nand Kishore Prasad Son of Late Siya Lal Sah,
Resident of Mauza P.O. Sadha, P.S. Chapra Muffasil, District Saran.

... .. Petitioner/s

Versus

1. Ram Ikbal Sah, Son of Late Siya Lal Sah.
2. Lalti Devi, wife of Ram Ikbal Sah. Both Resident of Mauza P.O.- Sadha, P.S. Chapra Muffasil, District- Saran.
3. Smt. Meera Devi, Wife of Naresh Prasad, Kayam, Resident of Sakin- East Salempur Sadha Road, P.O. Chapra, P.S. Chapra Town, District Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akhileshwar Pandey, Advocate Mr. Arghesh Kumar, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 23-01-2024

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

02. The petitioner has filed the present petition under Article 227 of the Constitution of India, challenging the order dated 20.05.2017 passed by the learned Sub. Judge-I, Saran at Chapra in Title Suit No. 69 of 2014 rejecting the amendment petition dated 29.08.2014 filed by the defendant no.1, i.e., petitioner herein, under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

03. The case of the petitioner as it appears from the



record is that respondent nos. 1 and 2 are plaintiffs before the learned lower court and the petitioner and respondent no. 3 are defendants. A Title Partition Suit No. 69 of 2014 was filed by respondent nos. 1 and 2 against the petitioner and respondent no. 3 with regard to suit land which is part of plaint as Schedule-1 and 2. The defendant no.1/petitioner appeared and filed his written statement. It further transpires that after filing of the written statement, a petition for amendment of written statement was filed by the petitioner on 29.08.2014 under Order-VI, Rule-17 of the Code. The learned Sub. Judge-I, Saran at Chapra vide impugned order refused the prayer of defendant no.1/petitioner.

04. Learned counsel for the petitioner submits that the order of the learned court below is not sustainable and the learned lower court ought to have allowed the amendment petition of the petitioner. The suit has been filed by the plaintiffs for partition of the ancestral property against the petitioner and respondent no. 3. Some error crept in the written statement which the defendant no. 1 sought to amend by filing the amendment petition. No new facts have been tried to be brought in the written statement. The amendment can be allowed at any stage of the suit. The amendment sought to be brought by the petitioner is necessary for adjudication of real controversy



between the parties. If the amendment is not allowed, it will lead to multiplicity of the litigation. On this aspect, the learned counsel placed reliance on a decision of Hon'ble Supreme Court in the case of ***Ram Niranjana Kajaria v. Sheo Prakash Kajaria, (2015) 10 SCC 203 [Paras- 18, 20, 22, 27]***. On the aforesaid grounds, learned counsel for the petitioner assailed the order of the learned Sub. Judge-I, Saran at Chapra rejecting the prayer of the defendant no.1/petitioner for amendment in the written statement.

05. I have given my thoughtful consideration to the submission made on behalf of the petitioner and have also gone through record. The amendment sought by the petitioner is as follows:-

“1. व्यान तहरीरी के पारा 17 की पांचवी पंक्ति में अल्फाज नं0-2 को के बाद अल्फाज "मोनासीब" को काट दिया जाय वो उसी पारा की छठी पंक्ति में अल्फाज बेनामा करके बाद अल्फाज "के कब्जा करा" को काट दिया जाय ।

2. व्यान तहरीरी के पारा-19 की पांचवी पंक्ति में अल्फाज बैनामा करके बाद अल्फाज "के कब्जा करा" को काट दिया जाय वो अंक 2 को काटकर अंक "1" बना दिया जाय ।

3. व्यान तहरीरी के पारा-20 की पांचवी पंक्ति में अल्फाज बैनामा के बाद अल्फाज "करके कब्जा करा दिये जिस पर मुदालह नं0 2 का दखल कब्जा चला आता है जिसमें मुदालह नं0 -2 बैनामा के बाद



तीन कोठरी बनाये है वो चापाकल गड़वाये हैं वो कुछ जमीन खाली है जिसको मुदालह नं0-2 इस्तेमाल करते चले आते हैं। मुदईयान गलत व्यान किए है कि मुदालह नं0-2 का कब्जा सिडिउल नं 0-"ख" के एराजी पर नहीं हुआ। बंटवारा मोताविक मन मुदालह का कब्जा चला आता था वो बैनामा के बाद से मुदालह नं0-2 का कब्जा चला आता है " को काट दिया जाय वो बारहवीं पंक्ति में अल्फाज कागज है, के बाद अल्फाज "वो उसके आधार पर मुदालह नं0-2 का कब्जा चला आता है" को काट दिया जाय ।

4. यह कि व्यान तहरीरी के पारा 21 के बाद एक नया पारा 21"क" जोड दिया जाय ।

"21. "क" यह वि उक्त बयनामा के आधार पर मुदालह नं0-2 का दखल कब्जा नहीं हुआ वो न है क्योंकि उक्त बयनामा 24 लाख रुपये में लिखने की बात चीत तय हुयी थी चूकि 24 लाख रुपये पर निबंधन शुल्क अधिक लग रहा था इसलिए मुदालह नं0-2 ने मुदालह नं0-1 से उसमें अवस्थित तीन कमरे वो ओसारे का जिक्र नहीं करने से मना किया और बयनामा में केवल जमीन का जिक्र ही किया गया और उसकी कीमत बयनामा कागज पर 4 लाख रुपया ही लिखा गया । बकिए 20 लाख रुपये के लिए यह तय हुआ कि कल होकर रुपया आपके खाते में जमा कर दिया जायेगा । मुदालह नं0-1 ने विश्वास कर बयनामा का रसीद दे दिया लेकिन मुदालह नं0-2 ने रुपया मन मुदालहा के खाते में जमा नहीं किए और हमेशा टाल मटोल करते आ रहे है जिसके लिए मन मुदालहा अलग से मोकदमा करने जा रही है । "

Obviously, the defendant no.1/petitioner wants to



withdraw his admission with regard to possession of defendant no. 2 and have also denied the statement of plaintiffs that the defendant no. 2 never came into possession of suit property of Schedule (*kha*). From bare reading of amendment, it is obvious that the defendant no. 1/petitioner wants to withdraw an admission, the same is one of the exceptions of Order-VI, Rule-17 of the Code, that normally amendment would be allowed but a clear cut admission cannot be resiled or withdrawn. Only clarification can be made by way of amendment. Reliance could be placed on the decision of Hon'ble Apex Court in the case of ***Ram Niranjan Kajaria*** (supra), wherein the Hon'ble Supreme Court has held that a categorical admission cannot be resiled from but, in a given case, it may be only explained or clarified. Paras- 19, 23 and 26 of the said decision read as under:

“19. In Gautam Sarup v. Leela Jetly [Gautam Sarup v. Leela Jetly, (2008) 7 SCC 85], after considering Panchdeo Narain Srivastava [Panchdeo Narain Srivastava v. Jyoti Sahay, 1984 Supp SCC 594] and Modi Spg. and Wvg. Mills Co. Ltd. v. Ladha Ram & Co. [(1976) 4 SCC 320] and several other decisions dealing with the amendment on withdrawal of admissions in the pleadings, it was held at para 28 as follows: (Gautam Sarup case [Gautam Sarup v. Leela Jetly, (2008) 7 SCC 85], SCC p. 94)

“28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled



from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.”

23. *We agree with the position in Nagindas Ramdas [(1974) 1 SCC 242] and as endorsed in Gautam Sarup [Gautam Sarup v. Leela Jetly, (2008) 7 SCC 85] that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in Panchdeo Narain Srivastava [Panchdeo Narain Srivastava v. Jyoti Sahay, 1984 Supp SCC 594] , does not reflect the correct legal position and it is overruled.*

26. *In the above circumstances, we do not intend to make the suit filed in the year 2005 otherwise infructuous. The application for amendment withdrawing the admissions made in the written statement on relinquishment of the claim to the suit property by Defendants 5 and 12 is rejected. However, we, in the facts and circumstances of the case, are of the view that Defendants 5 and 12 should be given an opportunity to explain/clarify the admissions made in the written statement. Accordingly, Defendants 5 and 12 are permitted to file an application within one month from today limiting their prayer only to the extent of explaining/clarifying the disputed admissions made in the written statement which will be considered on its merits and in the light of the observations made hereinabove.”*

06. Further, the Hon’ble Supreme Court in the case of



Modi Spg. & Wvg. Mills Co. Ltd. v. Ladha Ram & Co.,

reported in (1976) 4 SCC 320 in Para-10 held as under:-

“10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.”

07. So, the case of the petitioner is squarely covered by the aforesaid decision in the case of ***Modi Spg. & Wvg. Mills Co. Ltd.*** (supra). The learned court below has rightly rejected the prayer for amendment as made on behalf of the defendant no.1/petitioner for deleting the admitted facts. Therefore, I do not find any infirmity in the order dated 20.05.2017 passed by the learned Sub. Judge-I, Saran at Chapra and the same is hereby affirmed.

08. Accordingly, the instant Civil Misc. Petition stands dismissed. However, the defendant no.1/petitioner will be at liberty to file appropriate application within one month from



the date of receipt/production of this order in the learned court below limiting their prayer for amendment only to the extent of explaining/clarifying the disputed admissions in the written statement, if any. If such a petition is filed, the same will be considered by the learned court below on its own merits and in the light of the observations made by the Apex Court in the case of *Ram Niranjan Kajaria* (supra).

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29-01-2024
Transmission Date	N/A

