

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1307 of 2017

- 1.1. Bharat Singh Son of Late Raja Singh and Radhika Kuar, residents of Village - Gamhariya Kala, P.O. - Gauri Shankar Ke Bangra via - Jalalpur, P.S. Jalalpur, District-Saran. At present 48H/41, Pottery Road, Tangra, Kolkata.
- 1.2. Dilip Singh son of Late Raja Singh and Radhika Kuar, residents of Village - Gamhariya Kala, P.O. - Gauri Shankar Ke Bangra via - Jalalpur, P.S. Jalalpur, District-Saran.
- 1.3. Upendra Singh, son of Late Raja Singh and Radhika Kuar, residents of Village - Gamhariya Kala, P.O. - Gauri Shankar Ke Bangra via - Jalalpur, P.S. Jalalpur, District-Saran.
- 1.4. Dhananjay Singh, son of Late Raja Singh and Radhika Kuar, residents of Village - Gamhariya Kala, P.O. - Gauri Shankar Ke Bangra via - Jalalpur, P.S. Jalalpur, District-Saran.
- 1.5. Chinta Devi, Daughter of Late Raja Singh and Radhika Kuar, residents of Village - Gamhariya Kala, P.O. - Gauri Shankar Ke Bangra via - Jalalpur, P.S. Jalalpur, District-Saran.
- 1.6. Uma Kuar, daughter of Late Raja Singh and Radhika Kuar, residents of Village - Gamhariya Kala, P.O. - Gauri Shankar Ke Bangra via - Jalalpur, P.S. Jalalpur, District-Saran.
- 1.7. Mira Devi, Daughter of Late Raja Singh and Radhika Kuar, residents of Village - Gamhariya Kala, P.O. - Gauri Shankar Ke Bangra via - Jalalpur, P.S. Jalalpur, District-Saran.

... .. Petitioner/s

Versus

1. Shatrudhan Singh son of Late Jyoti Singh, residents of Village - Gamhariya Kala, P.S. Jalalpur, P.O. - Gauri Shankar Ke Bangra, Via - Jalalpur, Dist - Saran.
2. Harendar Singh
3. Prabhunath Singh Sons of Late Jyoti Singh
4. Radha Kishun Singh Son of Late Jyoti Singh Respondent nos. 1 to 4 residents of Village - Gamhariya Kala, P.S. Jalalpur, P.O. - Gauri Shankar Ke Bangra, Via - Jalalpur, Dist - Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate Mr. Koshalendra Rai, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 11-01-2024

The petitioners have challenged the order dated 19th



July, 2017 passed by the learned Additional District Judge- 1st Chhapra in Title Appeal No. 122 of 2012 whereby the Amendment Petition dated 08.09.2016 of the original plaintiffs/petitioners for amendment in the plaint regarding correction in the boundary of the suit property has been rejected.

02. The petitioners are the legal heirs of original petitioner who was plaintiff before the learned trial court in Title Suit No. 108 of 1997 who filed the suit against the respondents who were defendants in the court of learned Munsif-I, Chhapra seeking declaration of her title over the suit property and recovery of possession after removal of construction illegally made by the defendants/respondents. The case of the original plaintiffs/petitioners before the learned trial court was that suit property bearing RS Plot No. 435, measuring 01 *katha* 7 *dhurs* appertaining to *Khata* No. 89 situated in Village-Gamhariya *Kalan (Bangda)* P.S.-Jalalpur, District-Saran, stood recorded in the name of Bhajan Hazam. He died leaving behind his son Shivdhari Thakur. The suit plot was sold to Rama Singh vide registered sale deed dated 18.09.1925 by Shivdhari Thakur. However, due to mistake of scribe only 01 *katha* 05 *dhurs* got mentioned in the sale-deed but the entire plot measuring 01 *katha* 07 *dhurs* was sold to Rama Singh. Rama Singh died



leaving behind his two sons Raja and Rajendra. These two sons partitioned the aforesaid plot and Northern 13 and $\frac{1}{2}$ *dhurs* came in share of Rajendra Singh and Southern 13 and $\frac{1}{2}$ *dhurs* fell in the share of Raja Singh. The sons of Raja Singh resides outside and their mother, the widow of Raja Singh, the plaintiff, filed the suit as *Karta* and Manager of joint family of heirs of Raja Singh. Further case of the plaintiffs/petitioners was that the defendants at the instigation of descendants of Rajendra Singh encroached upon northern 07 and $\frac{1}{2}$ *dhurs* out of the share of Raja Singh in Plot No. 435 on 11.07.1997 and started making construction over the land. This encroached property of $7\frac{1}{2}$ *dhurs* is the subject matter of dispute.

03. After appearance of defendants/respondents in the title suit, they filed their written statement and contested the suit. The defendants claimed that Rama Singh was eldest among 08 brothers. One of them being Jyoti Singh, the father of the defendants and the suit plot was purchased in 1925 in the name of Rama Singh as *Karta* from joint family fund and it was joint family acquisition. The defendants further claimed that after private partition amongst Rama Singh and his brother, the entire suit plot fell into the share of Jyoti Singh, the ancestor of the defendants, and the plaintiffs/petitioners' claim about their title



and encroachment is not correct. But after contest, the learned trial court decreed the plaintiffs' suit and against the judgment and decree of the learned trial court, the defendants/respondents filed Title Appeal No. 122 of 2012, which is pending before the Court of learned Additional District Judge- 1st Chhapra. In the said title appeal, an amendment petition was filed on 08.09.2016 by the original plaintiffs/petitioner for making correction in southern boundary of the suit land by substituting the word 'plaintiff' instead of word 'Vidya Singh'. The defendants/appellants filed a rejoinder on 20.10.2015, opposing the amendment mainly on the ground that it was filed at belated stage and would change the nature of the case. The learned first appellate court, after hearing the parties, dismissed the amendment petition vide order dated 19.04.2017.

04. Learned counsel for the petitioners submitted that the order of the learned lower court is bad in the eye of law and hence it is not sustainable. The learned court below erred while holding that the proposed amendment will change the nature of the disputed land. The learned first appellate court failed to properly construe and interpret the plaint viz-a-viz the amendment petition. The learned first appellant court did not appreciate the fact that there is no change in the disputed land



and only mistake in description of southern boundary is sought to be corrected. Learned counsel further submitted that while filing the plaint, the mistake occurred in describing the boundary as while mentioning the boundary, the whole area of land was considered where as after the disputed plot of 07 and $\frac{1}{2}$ *dhurs*, it was the land of the plaintiffs/petitioners. The land of Vidya Singh was situated after the total land of 01 *katha* 07 *dhurs* but the encroachment is on northern 07 and $\frac{1}{2}$ *dhurs* of land and just after it, there is land of the plaintiffs/petitioners and at the southern boundary of the land of the plaintiffs/petitioners, there is land of Vidya Singh. But due to mistake, which was inadvertent, it has wrongly been mentioned that after the encroached land in southern boundary, there is land of Vidya Singh. Only this mistake is required to be corrected and for this reason, the amendment petition under Order-6 Rule-17 of the Code of Civil Procedure has been filed before the learned appellate court. Learned counsel reiterated that the land of Vidya Singh is situated in the south of the land of the petitioners. Further, the appeal is continuation of the trial and nature of suit would not change by this amendment. Thus, the learned counsel submitted that the learned first appellate court committed an error when it dismissed the amendment petition of



the plaintiffs/petitioners and the impugned order is liable to be set aside.

05. Perusal of record shows, despite a number of opportunities, none appeared on behalf of the respondents/defendants, though notices were held to be validly served upon the respondents. However, from the copy of the reply to the amendment petition before the learned first appellate court, it appears that respondents opposed the amendment petition stating it to be not maintainable and time barred. The respondents/defendants in their reply have also submitted that the proposed amendments have been made with the intention to fill up the *lacunae* and no cogent ground has been given. The respondents/defendants have further submitted that the learned trial court has issued the decree on the basis of boundary mentioned in the plaint and if the proposed amendment was accepted, it would change the nature of the suit. The respondents have further submitted that the disputed property never belonged to the plaintiffs/petitioners and she filed the suit as a test case before the learned trial court and the same was decreed on technical ground, without the evidence of the defendants. But during its trial, the plaintiffs did not bring any amendment before the learned trial court in their haste and to



deprive the defendants/appellants/respondents from adducing evidences. The plaintiffs/petitioners had also filed Execution Case No. 01 of 2012 in the court of learned Munsif-I, Chhapra and due to wrong description of the suit property, the decree has become infructuous. If the proposed amendment is allowed, the valuable right accrued to the defendants/appellants for their defence would come to an end.

06. From the record and submission made on behalf of the parties, the issue which arises for consideration before this Court is whether the dismissal of amendment petition of the petitioners claimed to be under a bonafide mistake of mentioning wrong boundary is wrong and the proposed amendment does not change the nature of suit.

07. The learned first appellate court while rejecting the prayer for amendment has mentioned the fact that while the evidence of the plaintiffs/respondent/petitioners was being recorded, the boundary of the disputed land was same as in plaint, which has been mentioned in the decree. Further, the first appellate court has also held that changing the boundary at this stage would result in change the nature of the disputed land. However, the suit has been decreed in favour of the plaintiffs/petitioners and it means the contention of the



petitioners have been upheld regarding their title upon the land as well as the claim of encroachment. It was the case of the plaintiffs/petitioners before the learned trial court that 27 dhurs land got divided between two brothers in equal halves, the husband of the original plaintiff got the southern portion of 13 and $\frac{1}{2}$ dhurs of land. If the encroachment of 7 and $\frac{1}{2}$ dhurs of land is claimed on the northern portion of the share of the original plaintiff, naturally, on the southern side of the said portion, the boundary should show the property of the original plaintiff. Moreover, the learned first appellate court while considering the respective claim of the parties may also take this fact into account.

08. So far as change in the nature of the suit is concerned, I am unable to comprehend how changing the boundary at the southern portion of the disputed land in the given facts and circumstances could change the nature of the suit. Moreover, the said boundary has not been admitted by the defendants/respondents in their written statement. Even after change in description of boundary, the suit of the plaintiffs would remain a suit for declaration and recovery of possession. At the same time, amendment cannot be rejected merely on the ground of delay, if the said amendment is necessary to resolve the real



controversy between the parties and the other parties could be compensated in terms of money. In this regard, reliance could be placed on the decision of Hon'ble Supreme Court in the case of ***Surender Kumar Sharma v. Makhan Singh***, reported in ***(2009) 10 SCC 626***. On both these counts, I do not think there is much merit in the submission of learned counsel for the respondents.

09. Order-VI Rule-7 of the Code of Civil Procedure 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. Recently, 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 a number of guidelines for allowing the amendment in the following terms:-

“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 negatived.

(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.

10. Thus, the amendment can be disallowed only if it causes injustice or prejudice to the other side otherwise, all amendments are to be allowed subject to restriction imposed in Paragraph No. 70-(iv) of the guidelines in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr*** (supra).

11. Having regard to the discussion made hereinbefore, I find and hold that the learned first appellate court committed an error when it rejected the amendment application of the plaintiffs/petitioners. Hence, the order dated 19th July, 2017 passed by the learned Additional District Judge-1st Chhapra in Title Appeal No. 122 of 2012, rejecting the amendment petition dated 08.09.2016 of the



plaintiffs/petitioners, is set aside and the amendment petition is allowed subject to payment of cost of Rs. 5,000/- to be paid to the defendants/respondents within a month of receipt/production of the copy of this order.

12. The learned first appellate court will also take into consideration the fact that the respondents/defendants are given ample opportunity to controvert/rebut the amendment sought to be brought, if they so desired.

13. 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 first appellate court will not be prejudiced by any of the observations made by this Court.

14. Accordingly, the present Civil Misc. petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	19-12-2023
Uploading Date	11-01-2024
Transmission Date	N/A

