

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1346 of 2017

- 1.1. Birendra Kumar Yadav Son of Late Jagdeo Prasad Yadav @ Jagdeo Prasad Choudhary Resident of Village- Nathu Chhap, P.S.- Siwan Muffasil, District- Siwan and presently residing at Hathua Morh, P.S.- Mirganj, District- Gopalganj.
- 1.2. Harendra Kumar Yadav Son of Late Jagdeo Prasad Yadav @ Jagdeo Prasad Choudhary Resident of Village- Nathu Chhap, P.S.- Siwan Muffasil, District- Siwan and presently residing at Hathua Morh, P.S.- Mirganj, District- Gopalganj.
- 1.3. Basanti Devi Daughter of Late Jagdeo Prasad Yadav @ Jagdeo Prasad Choudhary Resident of Village- Nathu Chhap, P.S.- Siwan Muffasil, District- Siwan and presently residing at Hathua Morh, P.S.- Mirganj, District- Gopalganj.

... .. Petitioner/s

Versus

Lal Deo Yadav @ Lal Deo Chaudhary S/o Late Hari Charan Yadav, R/o Village- Nathu Chhap, P.S.- Siwan Muffasil, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chandrakant, Advocate Mr. Jitendra Kumar Singh, Advocate
For the Respondent/s	:	Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 10-09-2024

Heard learned counsel for the parties.

2. The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 17.04.2017 passed by the learned Sub Judge-X, Siwan in Title Suit No. 643 of 2013 whereby and whereunder the petition filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (in short “the Code”) for amendment in the plaint has been rejected.



3. Learned counsel for the petitioners submits that the petitioners are heirs/legal representatives of the original plaintiff and the respondent is the defendant. The plaintiff filed Title Suit No. 643 of 2013 seeking the following reliefs:

I. For declaration that the plaintiff has right, title and possession over the Schedule "A" and Schedule "B" land/property and Defendant has not any right, Title over the Schedule "A" property but defendant possession over the Schedule A property is with the permission of the Plaintiff.

II. For that the decree and possession of the plaintiff may be declared over the Schedule "A" property after vacating the Possession of defendant over Schedule "A" property and also declare that Plaintiff has absolute title and possession over the Schedule "B" property.

III. For that the decree may be granted to plaintiff against the defendant

IV. For any other relief/reliefs for which plaintiff is entitled.

Defendant appeared and filed his written statement. During pendency of the suit, a petition was filed by the plaintiff for appointment of Pleader Commissioner for examination of the situation and status of the disputed land and a Pleader Commissioner was duly appointed. In course of enquiry by the Pleader Commissioner it came to the knowledge of the plaintiff that boundary of Schedule A land has been wrongly mentioned/typed for Schedule B land and the boundary of Schedule B land has been wrongly mentioned in Schedule A. As



soon as the plaintiff came to know about the error, he filed an amendment petition under Order 6 Rule 17 read with Section 151 of the Code on 20.01.2016. A rejoinder was filed by the defendant. Prayer in the amendment petition was two fold. First was for correction in the boundary and second to restrain the defendant from making any illegal construction over the suit property during pendency of the Title Suit. However, the learned trial court rejected the amendment petition.

4. Learned counsel for the petitioner further submits that the impugned order suffers from erroneous exercise of jurisdiction. The learned trial court has not considered that the suit was at the initial stage and issues are yet to be framed. Learned counsel further submits that the learned trial court has also not considered the fact that there would be no change in the nature of the suit and the finding of the learned trial court that change in boundary would result in change in the subject matter is erroneous. The learned counsel further submits that the description of boundary of Schedule A land has been mentioned in Schedule B and the description of boundary of Schedule B land has been mentioned in Schedule A and the same would not affect the nature of the suit. The plaintiffs/petitioners claimed title over the land of both Schedule A and Schedule B. It is only



that over the Schedule A property, the possession of the defendant has been admitted but with the permission of the plaintiffs. Khata No. and Plot No. are correct and only description of boundary had been typed wrongly. The learned counsel further submits that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. It is well settled law that purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleading in such manner and as such terms may be proper for substantiating his case. The learned trial court should not adopt a hyper-technical approach and amendment in pleadings requires a liberal approach. The learned counsel further submits that moreover as the trial has not commenced, all such amendment should be allowed which would help the Court in determination of real controversy between the parties.

5. Learned counsel appearing on behalf of the defendant/respondent vehemently oppose the submission made on behalf of the learned counsel for the petitioners. Learned counsel for the defendant/respondent submits that if the plaintiffs/petitioners are permitted to change the boundary of the suit land, the identity of the suit land would change and it would not be possible to say with certainty on which land, the



plaintiffs/petitioners has brought the suit since boundary decides the identity and not the holding number or plot number of the suit property. The learned counsel referred to the decision of this Court in the case of *Abdullah Khan Vs. Meena Khatoon & Ors.* reported in **2024 (2) BLJ 359** wherein it has been held that amendment for change in description of the property could be allowed but not the change of boundary.

6. Having regard to the rival submission of the parties in the background of facts and circumstances of the case, it would be apt to reproduce the relevant provision of law. Order-6, Rule-17 of the Code reads as under:

Order 6 Rule 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.”

I am of the view that as the matter is still at initial stage and issues are yet to be framed, the proposed amendment could be allowed as it should not cause prejudice to the other side which will always get the opportunity to rebut the contention of the plaintiffs by filing written statement or by



making amendment in their written statement if the written state is already filed or by filing additional written statement. The amendments though appear to be making change in boundary of suit land but in fact it appears to be a routine change since it has been contended that the boundary of Schedule A land has been mentioned in Schedule B and vice versa. For this reason it could not be said that by way of amendment the plaintiffs want to change the identity of the suit property. Further the second amendment about defendant making some construction are regarding subsequent event and could be allowed as the same does not appear to be *malafide* or causing prejudice to the defendant. The Court should be liberal in allowing the amendments if the trial has not begun and more so in the case where amendment is necessary for adjudication of real dispute between the parties. The law on this point has been settled by various decisions of the Hon'ble Supreme Court and recently in the case of ***Life Insurance Corporation of India vs. 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 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.



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

7. In the light of the aforesaid facts and circumstances and discussion made hereinabove, I am of the considered opinion that the impugned order dated 17.04.2017 could not be sustained and hence the same is set aside. The petition dated 19.02.2016 stands allowed. However, the defendant/respondent will be given ample opportunity to rebut the contention of the plaintiffs/petitioners by allowing the defendant to file amended written statement/additional written statement.

8. As a result, the present petition stands allowed. However, it is made clear that the Court has not entered into merits of the case of the respective parties and the learned trial court would proceed in the matter uninfluenced by any of the observations.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
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