

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1539 of 2018

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Rajeshwari Devi Wife of Rameshwar Prasad Sah Resident of Uttar Tola,
Nathnagar, Police Station- Nathnagar, District- Bhagalpur.

... .. Petitioner/s

Versus

1. Md. Kapil, Son of Late Md. Aziz Resident of Uttar Tola, Nathnagar, Police Station- Natnagar, District- Bhagalpur.
2. Md. Shamim Son of Md. Aziz Resident of Uttar Tola, Nathnagar, Police Station- Natnagar, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar, Advocate.
For the Respondent/s : Mr. Ram Pravesh Nath Tiwari, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-01-2024

Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. Matter is at the stage of admission and with the
consent of the parties, I intend to dispose of the petition at the
stage of admission itself.

3. The present petition has been filed for setting
aside the impugned order dated 13th of April, 2018 passed by
the learned Munsif-II, Bhagalpur, passed in Title Suit No. 75
of 2015 whereby and whereunder the application of the
petitioner under Order VI, Rule 17 of the Code of Civil
Procedure has been dismissed.



4. The facts of the case as it appears from the records is that the petitioner is plaintiff before the learned court below and she has filed the suit against the respondent who was defendant for delivery of possession of the suit land. The claim of the plaintiff-petitioner is based on a registered sale deed executed in her favour by one Pawan Kumar Sah on 10th of August, 1981. Further case of the petitioner is that the land was mutated in Municipal records in her favour. The defendants have dispossessed and encroached upon the petitioner-plaintiff from a portion of the land as mentioned in Schedule 'B' and Schedule 'C' of the plaint.

5. The defendants appeared and filed the written statement stating that they are in possession of the property in question and there is *pucca* construction upon the suit land which is claimed by the plaintiff and the plaintiff-petitioner wants to create the litigation by creating forged documents. The plaintiff-petitioner filed an amendment petition for correcting some portion of the plaint by deleting and adding certain words stated to be typographical error and also to amend the boundary of the suit land. However, the learned trial court rejected the amendment petition recording a finding



that the amendment petition has been filed belatedly and the same will change the nature of the suit land. Thereafter, the plaintiff-petitioner filed Misc. Appeal No. 211 of 2018 before the learned District Judge, Bhagalpur, but the same was withdrawn as it was not maintainable.

6. Aggrieved by the order of the learned Munsif-II, Bhagalpur, the petitioner has filed the instant petition.

7. Learned counsel for the petitioner submits that the learned court below has erroneously recorded the finding that the plaintiff wants to change the boundary of the suit land and it will result in change in the nature of the suit. Learned counsel further submits that there is no question of change in the nature of the suit since by the amendment sought by the petitioner, only certain typographical mistakes are sought to be corrected. Some errors have crept in the details of the suit property and the same needs to be rectified. The learned counsel for the plaintiff-petitioner took the court through the amendment petition which was filed before the learned trial court to stress the fact that the suit has been filed for recovery of possession and change in the details of the property or the boundary, will have no effect on the nature of the suit.



Learned counsel also submits that another reason given by the learned trial court was that the petition for amendment has been filed quite belatedly, as written statement has already been filed on behalf of the defendants and the plaintiff has produced four witnesses in support of his case. But amendment could be made at any stage of the proceeding if it is necessary for the purpose of proper adjudication of the dispute. Learned counsel next submits that by allowing the amendment, no serious prejudice would be caused to the defendants. On the other hand, plaintiff-petitioner would be seriously prejudiced if the amendment is not allowed.

8. Learned counsel appearing on behalf of the defendants/respondents vehemently contended that there is no infirmity in the impugned order and the petitioner has been trying to delay the disposal of the case. Learned counsel further submits that change in the boundary of the suit property, will change the nature of the suit. The amendments sought are vague and has been filed at a belated stage without explaining the delay.

9. Perused the record.



10. Having regard to the contention of the parties, it would be beneficial to look into the amendment petition. The plaintiff-petitioner has sought the following amendments:-

(i) That in 3rd line of para-2 of the plaint, the plaintiff wants to add “during survey”.

(ii) That the plaintiff wants to delete in the first line of Schedule ‘B’ 4’ x 3” and substitute 9’ and 4” and in third line wants to add the part of 915 K and in the 4th line wants to add Ward No. 23 and wants to delete in southern boundary Hari Saw and substitute plaintiff and in the western boundary wants to delete Md. Ajij and substitute Md. Kapil

(iii) That in Schedule ‘C’ the plaintiff wants to add in the third line the part of 915 K and substitute old Ward No. 23 after 8.

(iv) That the plaintiff wants to delete in the boundary of Schedule ‘C’ the plaintiff wants to delete road and substitute part of Schedule land and wants to delete Hari Saw in Southern boundary and substitute plaintiff and wants to delete Pawan



Kumar Sah and substitute Plaintiff in eastern boundary and wants to delete plaintiff and substitute Md. Shamim in western boundary.

11. Plain reading of the amendment shows amendments having been sought are for deleting and correcting the area or boundary of the suit property as mentioned in Schedule 'B' and 'C'.

12. The suit has been filed for recovery of possession of the suit property as mentioned in Schedule 'B' and 'C'. Further perusal of the record shows even after change of area or boundary, the nature of the suit would not change for the simple reason that it will remain the suit for recovery of possession and the boundary is already in dispute as it appears from the written statement of the defendants.

13. 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 certain guidelines to deal with the matter. It reads as under:-

“ 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 pinpointedly 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)”.

14. In the light of the fact that the amendment sought to be introduced are quite relevant for the purpose of disposal of the dispute between the parties as the amendments are required for effective and proper adjudication of the controversy between the parties, the same could be allowed. So far as the amendments being brought at belated stage is concerned, the defendants could be compensated in terms of money and at the same time defendants are also entitled to file additional written statement after the amendment is allowed.

15. Further, delay in making application on its own could not be a ground for rejection of the application unless serious prejudice would be caused to be other party and accrued rights are taken away as a result of amendment. I do not think the same is true for present case. Reliance could be



placed on the decision of *Life Insurance Corporation of India* (supra). As a result the instant petition is allowed and the order dated 13.4.2018 passed by the learned Munsif-II, Bhagalpur, passed in Title Suit No. 75 of 2015 is set aside and application for amendment dated 15.3.2018 is also allowed subject to cost of Rs.5,000/- (Rupees Five thousand) to be paid to the defendants within a month of receipt/production of a copy of this order.

16. Learned court will ensure that the defendants are given ample opportunity to rebut the contention of plaintiff so introduced by amendment, if they so desired.

(Arun Kumar Jha, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10/01/2024
Transmission Date	

