

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1925 of 2018

1. Deepnarayan Singh S/o Late Brahamdeo Singh Residents of Mohalla - New Colony, Balu Ghat, P.S Town, P.O - Head post office, District - Muzaffarpur
2. Ajit Kumar Singh S/o Deepnarayan Singh Residents of Mohalla - New Colony, Balu Ghat, P.S Town, P.O - Head post office, District - Muzaffarpur
3. Sanjay singh @ Sanjay Kumar Singh S/o Deepnarayan Singh Residents of Mohalla - New Colony, Balu Ghat, P.S Town, P.O - Head post office, District - Muzaffarpur
4. Rekha Singh W/o Ajit Kumar Singh Residents of Mohalla - New Colony, Balu Ghat, P.S Town, P.O - Head post office, District - Muzaffarpur

... .. Petitioner/s

Versus

- 1.1. Shahid Hassan Son of late Md. Hassan Resident of Mohalla Haji Colony, Mithanpura, Police Station Mithanpura, District- Muzaffarpur.
- 1.2. Rafia Hassan W/o Naimuddin, Daughter of Late Md. Hassan Resident of Mohalla Haji Colony, Mithanpura, Police Station Mithanpura, District- Muzaffarpur.
- 1.3. Zinat Firdus W/o Md. Jawed, Daughter of Late Md. Hassan Resident of Mohalla Haji Colony, Mithanpura, Police Station Mithanpura, District- Muzaffarpur.
- 1.4. Saziya Siddique W/o Anwar Ahmad, Daughter of Late Md. Hassan Resident of Mohalla Haji Colony, Mithanpura, Police Station Mithanpura, District- Muzaffarpur.
- 1.5. Raziya Hassan W/o S.N. Belal, Daughter of late Md. Hassan Resident of Kaji Nagar, Phulwari Sharif, Dist Patna.
2. Rasida Khatoon @ Anwari Khatoon W/o Md. Hassan Residents of Mohalla - Mithanpura Chowk, Hazi Gali, P. S - Mithanpur, P. O - Ramna, District - Muzaffarpur
3. Leelawati Devi W/o Late Bijli Prasad Sharma Residents of Mohalla - New Colony, Balughat, P.S Town, P.O - Head post office, District - Muzaffarpur
4. Umesh Kumar Sharma Son of Late Parma Nand Rai Residents of Mohalla - New Colony, Balughat, P.S Town, P.O - Head post office, District - Muzaffarpur
5. Girish Kumar Sharma Son of Late Parma Nand Rai Residents of Mohalla - New Colony, Balughat, P.S Town, P.O - Head post office, District - Muzaffarpur
6. Shailesh Kumar Sharma Son of Late Parma Nand Rai Residents of Mohalla - New Colony, Balughat, P.S Town, P.O - Head post office, District - Muzaffarpur
7. Anil Kumar S/o Sri Deep Narayan Singh Residents of Mohalla - New Colony, Balughat, P.S Town, P.O - Head post office, District - Muzaffarpur
8. Bachcha Babu S/o Sri Hari Shankar Sah Residents of Mohalla - New



- Colony, Balughat, P.S Town, P.O - Head post office, District - Muzaffarpur
9. Manju Devi W/o Sri Bachcha Babu Residents of Mohalla - New Colony, Balughat, P.S Town, P.O - Head post office, District - Muzaffarpur
 10. Sri Manoranjan Prasad Singh Akela S/o Late Yogendra Singh Residents of village - Tengraha P.S - Meenapur, District -Muzaffarpur
 11. Smt. Renuka Singh W/o Manoranjan Prasad Singh Residents of village - Tengraha P.S - Meenapur, District -Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahendra Prasad Bhartee, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 23-01-2024

The petitioners are aggrieved by the order dated 13.08.2018 passed by the learned Subordinate Judge-XVI, Muzaffarpur (East) in Title Suit No. 1216 of 2014 allowing the petition dated 19.11.2016 filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

02. The facts of the case as it emerges from the record are that plaintiffs/respondents-1st set filed Title Suit No. 1216 of 2014 for declaration of their title and interest over Schedule-I land, confirmation of possession over Schedule-I/A land and recovery of possession over Schedule-2 land of the plaint with a direction to remove the illegal unauthorized construction and handing over its vacant possession. The petitioners are defendant nos. 5, 6, 8 and 11. The defendants/petitioners filed



their written statement rebutting the claim of the plaintiffs. The plaintiffs filed an amendment petition dated 29.11.2016 for inclusion of new Paragraphs- 18 to 32 and renumbered paragraphs- 18 to 28 as 29 to 43 with additional prayer to make the District Collector, Muzaffarpur as a party defendant no. 14. In the amendment petition, further relief(s) have been added including cancellation of sale deeds. The defendants/petitioners filed their rejoinder dated 04.03.2017 to the amendment petition, opposing the contention of the plaintiffs. After hearing the parties, the learned Subordinate court allowed the amendment petition in part. The petitioners are aggrieved by the said order and challenged the same before this Court in the instant petition.

03. Learned counsel for the petitioners submitted that the order of the learned trial court is against the law and it has committed material irregularity which requires consideration by this Court. The learned trial court exceeded its jurisdiction. The learned trial court did not consider the fact that by allowing the amendment, it has allowed introduction of a new case and the same is not sustainable in law. The learned trial court did not take into consideration the fact that the plaintiffs have tried to challenge the survey entry in *khatiyān* as well as some sale-



deeds as well after a very long gap of time and has tried to raise time barred claim by way of amendment. Learned counsel reiterated that the objection of the petitioners was not considered. The learned trial court has also not considered the fact that by introducing the amendment, the plaintiffs have virtually re-written their plaint. Further, the learned trial court allowed the amendment petition challenging the survey entry in *khatiyān* but refused to make the Collector as party in the suit as defendant no. 14. If State Government is not made party though relief has been sought for correction in *khatiyān* entry, the suit would become bad for non-joinder of necessary party. The learned trial court has failed to consider the objections raised by the defendants/respondents and brushed aside the same by passing a cryptic order. Thus, the learned counsel submitted that the order of the learned trial court is bad in the eye of law and the same could not be sustained.

04. Perused the record. The respondents have been duly served but they chose not to appear and the matter has been taken for disposal after hearing the learned counsel for the petitioners.

05. In their title suit, the plaintiffs have sought the following relief(s):-



“(i) That on adjudication of the facts stated above the right, title, interest of the plaintiffs over Schedule I of the plaint be declared.

(ii) That possession of the plaintiffs over Schedule I/A of the plaint be confirmed and the defendants be restrained permanently from interfering in peaceful possession of the plaintiffs over Schedule I/A of the plaint.

(iii) That a decree for recovery of possession with respect to Schedule 2 of the plaint be passed in favour of the plaintiffs against the defendants directing them to remove unauthorised ad illegal construction from Schedule 2 of the plaint and handover vacant possession to the plaintiffs within the time fixed by the court failing which the plaintiffs be put in possession over Schedule 2 of the plaint through the process of law at the cost of defendants.

(iv) That cost of the suit be awarded to the plaintiffs.

(v). To what other relief and reliefs for which the plaintiffs are found entitled to.”

06. From reading of reliefs portion of plaint, one thing is very much clear that the suit has been filed for declaration of right, title and interest over Schedule-I of the suit property apart



from confirmation of possession over Schedule-I/A property of the suit with permanent injunction in favour of plaintiffs and against the defendants with further relief of removal of encroachment from Schedule-2 land of the plaint. However, through their amendment petition, the plaintiffs have tried to make a number of amendments in their plaint and as submitted by the learned counsel for the petitioners/defendants, the plaintiffs had tried to re-write their plaint. The plaintiffs have sought to introduce 11 new paragraphs. In the relief portion amendments have been sought for setting aside the survey *khatiyani* entry dated 17.01.1981 and also for declaration of some sale-deeds as null and void starting from first sale deed no. 9965 dated 29.05.1999 in favour of one Bachha Babu to sale deed no. 22404 dated 16.09.2004 in favour of one Manoranjan Prasad Singh. The insertion of the aforesaid reliefs has been assailed by the petitioners to be time barred. Certain corrections were also sought in Schedule-I and Schedule I/A of the suit property. From the impugned order, it appears that the trial has not commenced before the learned subordinate court as it has been mentioned in the impugned order that the issues have not been settled.

07. 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***, has held that where the amendment is sought before commencement of trial, the court is required to be liberal in its approach while bearing 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. The Hon'ble Supreme Court further held that 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. In the same matter, the Hon'ble Supreme Court has also held that the amendment ought to be allowed if the amendment is required for effective and proper adjudication of the controversy between the parties and to avoid multiplicity of proceedings. So far as, raising of time barred claim is concerned, even in that case, the defendants/petitioners have a right to raise the issue of maintainability on the ground of limitation.

08. For the aforesaid reasons, without going into the



merits of the case, I think the learned subordinate court has passed a just order in order to avoid the multiplicity of litigation. It was not necessary for the learned trial court to record each and every contention of the petitioners and reject the same after a detailed order. The learned trial court has clearly mentioned that the defendants will have their right to file additional written statement. However, since entry in survey *khatiyar* has been challenged, the District Collector should be a necessary party and the learned trial court ought to have made the District Collector as party in the suit before it. Therefore, the amendment petition dated 19.11.2016 is allowed in its entirety and the impugned order dated 13.08.2018 passed in Title Suit No. 1216 of 2024 stands modified to the extent as stated above.

09. In the result, the present Civil Misc. petition stands dismissed.

10. The learned trial court is directed to allow ample opportunity to the petitioners/defendants to controvert/rebut the amendment sought to be brought by filing additional written statement, in order to ensure a level playing field.

11. 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 trial court will not be prejudiced by
any of the observations made by this Court.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	11-01-2024
Uploading Date	23-01-2024
Transmission Date	N/A

