

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.329 of 2022

1. Binod Bhagat, son of Late Bhagwan Bhagat, Resident of Village-Bharri, P.S.-Kadwa, District-Katihar, at present resident of Village-Trashkund, P.O. and P.S.-Farbesganj, District-Araria.
2. Serwan Bhagat @ Sharwan Bhagat, son of Late Bhagwan Bhagat, Resident of Village-Bharri, P.S.-Kadwa, District-Katihar, at present resident of Village-Trashkund, P.O. and P.S.-Farbesganj, District-Araria.

... .. Petitioner/s

Versus

1. Dwarika Bhagat, son of Late Hira Bhagat, Resident of Village-Bharri, P.S.-Kadwa, District-Katihar.
2. Shiv Shanker Bhagat, son of Late Maneshwari Devi, resident of Village-Tirishkund, P.S.-Farbesganj, District-Araria.
3. Shiv Narayan Bhagat, son of Late Maneshwari Devi, resident of Village-Tirishkund, P.S.-Farbesganj, District-Araria.
4. Shiv Nath Bhagat, son of Late Maneshwari Devi, resident of Village-Tirishkund, P.S.-Farbesganj, District-Araria.
5. Sumitra Devi, Daughter of Late Maneshwari Devi, Wife of Shiv Nandan Bhagat, Resident of Village-Araria, P.O. and P.S. and District-Araria.
6. Janki Devi, Daughter of Late Maneshwari Devi, Wife of Late Jagdish Bhagat, Resident of Village-Kusmol, P.O. and P.S.-Bhargama, District-Araria.
7. Mina Devi, Daughter of Late Maneshwari Devi, Wife of Pradeep Bhagat, resident of Village-Tirishkund, P.O. and P.S.-Farbesganj, District-Araria.
8. Shanti Devi, Daughter of Late Maneshwari Devi, Wife of Kamleshwar Bhagat, resident of Village-Bhargama, P.O. and P.S.-Bhargama, District-Araria.
9. Yamuna Prasad Bhagat, Son of Late Jaleshwari Devi, resident of Village-Tirishkund, P.O. and P.S.-Farbesganj, District-Araria.
10. Surya Narayan Bhagat, Son of Late Jaleshwari Devi, resident of Village-Tirishkund, P.O. and P.S.-Farbesganj, District-Araria.
11. Manika Devi, Daughter of Late Jaleshwari Devi, Wife of Kamleshwar Bhagat, resident of Village-Tirishkund, P.O. and P.S.-Farbesganj, District-Araria.



12. Girja Devi, Daughter of Late Yadu Bhagat, Wife of Hari Bhagat, resident of Karahgola, P.S.-Karahgola, District-Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Najeeb Ahmad, Advocate
Mr. Thakur Brajesh Singh, Advocate
For the Respondent/s : Mr. Ajit Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 22-10-2024

Heard learned counsel for the petitioners as well as learned counsel for the respondent no.1.

2. The petitioners have filed the instant petition under Article 227 of the Constitution of India against the order dated 20.12.2021 passed by the learned Sub Judge-cum-ACJM, Barsoi, Katihar in Title Suit No. 25 of 2007 whereby and whereunder the petition dated 06.09.2018 filed on behalf of the plaintiffs/petitioners under Order 6 Rule 17 of the Code of Civil Procedure (in short 'the Code') seeking amendment in their plaint has been rejected.

3. Learned counsel for the petitioners submits that the impugned order is not sustainable as the petition of the petitioners has been rejected merely on the ground of delay. Thus, it implies refusal to exercise the jurisdiction vested in the court. Learned counsel further submits that the amendment sought is formal in nature as it is a partition suit and the



petitioners, who are plaintiffs, want to bring some other ancestral lands on record which could not be brought on record earlier. Learned counsel further submits that if there is delay in bringing to amendment, the same could not cause any prejudice to the defendants/respondents. The defendants/respondents have not denied the nature of ancestral land which the petitioners are seeking to bring on record as a suit property. The defendants/respondents could be adequately compensated by imposition of cost and for ends of justice and determination of the controversy between the parties, the amendments sought on behalf of the plaintiffs/petitioners ought to have been allowed.

4. Learned counsel appearing on behalf of respondent no.1 vehemently opposes the submission made on behalf of the petitioners. Learned counsel for the respondent no.1 submits that the law on this point is very clear. Proviso to Rule VI Order 17 of the Code is mandatory in nature and in the present case, the amendment has been sought after 12 years of the institution of the case and at the stage when the evidence of the plaintiffs/petitioners has been closed. There is no explanation for bringing the amendment at such belated stage. The plaintiffs/petitioners failed to show any due diligence on their part and in these circumstances, there is nothing illegal or



improper in the impugned order and the same needs to be sustained.

5. I have given my thoughtful consideration to the rival submission of the parties in the light of facts and circumstance of the case. Order VI Rule 17 of the Code reads as under:-

“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.”

6. Furthermore, the plaintiffs/petitioners have utterly failed to show that despite due diligence they could not have raised the matter earlier in time. Hence, such amendment will be hit by proviso to Order VI Rule 17 of the Code. The Hon’ble Supreme Court in the case of **Basavaraj vs. Indira & Ors.** reported in **(2024) 3 SCC 705**, has held that the Court should



not allow the amendments at belated stages if due diligence has not been shown. In the case of *Basavaraj* (supra), the Hon'ble Supreme Court quoted the case of *M. Revanna vs. Anjanamma* reported in **(2019) 4 SCC 332** and held that Order 6 Rule 17 of the Code prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The Hon'ble Supreme Court further held that the burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right.

7. Coming back to the facts of the case, admittedly the amendment has been sought after the closure of evidence of the plaintiffs. The application filed for the amendment only mentions that there has been some inadvertent typing mistakes and some lands have been left to be inserted in schedule as well as body of the plaint. Clearly such explanation would not suffice to meet the requirement of proviso to Order VI Rule 17 of the Code.

8. Therefore, in the light of the aforesaid discussion, I do not find the learned trial court has committed any error of jurisdiction and, hence, the impugned order dated 20.12.2021



passed by the learned Sub Judge-cum-ACJM, Barsoi, Katihar in
Title Suit No. 25 of 2007 is affirmed.

9. Accordingly, the instant civil miscellaneous petition
stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.10.2024
Transmission Date	NA

