

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.432 of 2023

1. Mohan Sahani Son of Late Chhathu Sahani, Resident of Village-Parmanandpur, P.O., P.S. and District-Vaishali.
2. Arjun Sahani, son of Late Chhathu Sahani, Resident of Village-Parmanandpur, P.O., P.S. and District-Vaishali.
3. Most. Babuni Devi, Wife of Late Nathuni Sahani, Resident of Village-Parmanandpur, P.O., P.S. and District-Vaishali.

... .. Petitioners

Versus

1. Jagan Sahani son of Munsu Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
2. Lalan Sahani, son of Late Nathuni Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
3. Amresh Sahani, son of Late Nathuni Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
4. Gujari Devi, Daughter of Late Nathuni Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
5. Samundri Devi, Daughter of Late Nathuni Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
6. Sukanti Devi, Daughter of late Nathuni Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
7. Sunita Devi, Daughter of Late Nathuni Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
8. Mokhtar Sahani, son of Late Jangbahadur Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
9. Ranju Devi, Daughter of Late Jangbahadur Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
10. Rupa Devi, Daughter of Late Jangbahadur Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
11. Sanju Devi, Daughter of Late Jangbahadur Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
12. Munni Devi, Daughter of Late Jangbahadur Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
13. Raushan Sahani, son of Late Chhathu Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
14. Suresh Sahani, son of Late Chhathu Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
15. Shubham Sahani, son of Late Chhathu Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
16. Murli Devi, Daughter of Late Chhathu Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.



17. Rekha Devi, Daughter of Late Chhathu Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
18. Tila Devi, Daughter of Late Chhathu Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.
19. Mamta Devi, Daughter of Late Chhathu Sahani, Resident of Village-Parmanandpur, PO, PS and District-Vaishali.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar, Advocate
For the Respondent/s : Mr. Prakash Chandra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 22-08-2024

The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 13.02.2023 passed by the learned Munsif-I, Hajipur in Title Suit No. 112 of 1994, whereby and whereunder the learned Munsif allowed the amendment petition filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short 'the Code') by the plaintiff/respondent no. 1 for amendment of the plaint.

02. Briefly stated, the factual matrix of the case is that the plaintiff/respondent no. 1 filed Title Suit No. 112 of 1994 on 16.06.1994 against the defendants, the petitioners herein as well as the respondents-2nd set, for declaration of title and recovery of possession with respect to Schedule 1 & 2 land. The plaintiff is the only son of one Munshi Sahani. Banshi Sahani and Munshi Sahani were full brothers and their father was Bahadur Sahni. They possessed a piece of land appertaining to old *Khesra No.*



412 having area about 12 decimals. By a private partition, Munshi Sahani got 06 decimals land from the East and Banshi Sahani got 06 decimals land from the West and they had been coming in peaceful possession over their respective shares. After death of his father, the plaintiff came into possession over 06 decimal land. During revisional survey operation in the year 1961, new *Khesra No.* 616 with respect to land of the plaintiff was recorded in the name of father of the plaintiff, Munshi Sahni, and new *Khesra No.* 615 was recorded in the name of Banshi Sahani. However, the revisional survey authority prepared the *khatiyani* in the name of father of the plaintiff only with respect to 03 decimal land instead of 06 decimals land. When the plaintiff came to know about this fact, he filed Case No. 02 of 1977 before the Consolidation Officer who ordered to deduct 2 ½ decimal land from *Khesra No.* 615 and to add the same with *Khesra No.* 616. Thereafter, the plaintiff came in possession of 5 ½ decimal land. Banshi Sahani sold 04 decimal land out of his 06 decimal land to the plaintiff vide sale deed dated 18.12.1983. As such the plaintiff came in possession of 10 decimal land. Subsequently, the plaintiff came to know 2 ½ decimal land from south out of 10 decimal lands have been recorded in *Khesra No.* 617, which was recorded in the name of



defendant-1st set. Therefore, the plaintiff filed Title Suit No. 14 of 1985 against Banshi Sahani and all defendants. Subsequently, the case was renumbered as Case No. 195 of 1987. The defendants appeared on 22.11.1985 but did not contest the title suit and, therefore, an *ex parte* decree was passed on 03.01.1990 in favour of the plaintiff with respect to 10 decimal lands. Further case of the plaintiff is that the land of the defendants-1st set is situated adjacent south and land of the defendants-2nd set is situated adjacent west of aforesaid 10 decimal land of the plaintiff. Further case of the plaintiff is that the defendants-1st set dispossessed the plaintiff from 2 ½ decimal land from south and the defendants -2nd set dispossessed the plaintiff from 2 ½ decimal land from west on 05.05.1994. Thereafter, the plaintiff filed present title suit for declaration of title and recovery of possession with respect to Schedule-1 & 2 land. Title Suit No. 112 of 1994 was decreed *ex parte* on 03.09.1997/25.04.1998. Thereafter, defendant no.2, Jang Bahadur Sahani, filed Misc. Case No. 04 of 2009 under Order 9 Rule 13 of the Code and the said miscellaneous case was dismissed by the learned trial court. Against the dismissal order, the defendants preferred an appeal under Order 43 Rule 1(d) of the Code. The learned appellate court set aside the *ex parte* judgment and decree. The defendants



appeared in the suit and filed their written statement. The defendant no. 1(k) and 2(i) appeared and filed their written statement stating *inter alia* that the part of the ancestral house of the defendants is situated on the disputed plot and neither the plaintiff had any title nor possession over the disputed property nor the plaintiff had any concern with the disputed plot. The plaintiff was never in possession of eastern 06 decimal land but Chhathu Sahani was in continuous possession over 1 ½ decimal land of eastern side of *Khesra* No. 616 vide registered sale deed dated 15.11.1983. The said sale deed shows in the southern boundary, the name of Jang Bahadur Sahani has been recorded and in the western boundary, the name of plaintiff-Jagan Sahani has been recorded. The sale-deed was executed by the uncle of the plaintiff, namely Banshi Sahani, and the plaintiff never challenged the said sale deed. The defendant nos. 3(k) and 3(kh), Mohan Sahani and Arjun Sahani, respectively, also filed written statement on 29.09.2020 stating therein that the Schedule-2 property belonged to uncle of the plaintiff, namely, Banshi Sahani, who sold Schedule-2 land to the father of answering defendants vide registered sale deed dated 15.11.1983 and in the said sale deed, in southern boundary, name of Jang Bahadur Sahani and in the western boundary,



name of plaintiff-Jagan Sahani have been recorded. In this background, plaintiff filed an application on 12.02.2021 under Order VI Rule 17 of the Code to amend the plaint of Title Suit no. 112 of 1994 for answering his claim against sale-deed dated 15.11.1983. The defendant nos. 3(k) and 3(kh) filed their rejoinder to the amendment application on 19.03.2021 objecting the proposed amendment. The learned trial court after considering the material available before it, allowed the amendment petition, which has been challenged before this Court in the present petition.

03. Learned counsel for the petitioners submitted that the learned trial court acted illegally and passed the impugned order ignoring the law, resulting in miscarriage of justice. The learned trial court has not considered the fact that the plaintiff/respondent no. 1 has full knowledge of the registered sale deed dated 15.11.1983 from the date of its execution and registration. The plaintiff/respondent no. 1 sought to introduce a time barred claim and the learned trial court ought to have declined the proposed amendment on the ground that a fresh suit on the amended claim shall be barred by law of limitation. Thus, the learned trial court acted contrary to the settled law that a time barred claim/relief cannot be inserted by way of



amendment if a fresh suit is barred by law of limitation. Learned counsel for the defendants-1st set/petitioners further submitted that the amendment application has been moved with wrong averment. The plaintiff/respondent no. 1 had full knowledge of sale deed dated 15.11.1983 from the very beginning and certainly from the date when the defendants produced the said sale deed in Misc Case No. 04 of 2009 filed by the defendant, Jang Bahadur Sahani, under Order 9 Rule 13 of the Code for setting aside the *ex parte* judgment and decree through list of document dated 12.07.2013. Learned counsel for the plaintiff cross-examined the witness of the defendants on the point of sale deed in Misc. Case No. 04 of 2009 on 28.03.2014. Hence, an incorrect statement has been made by the plaintiff that he came to know about the sale deed recently. Thus, the learned trial court acted with material irregularity when it allowed the amendment application. In support of his contention, learned counsel for the petitioners relied on a decision of Hon'ble Supreme Court in the case of ***Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and Ors.***, reported in (2007) 14 SCC 120, wherein the Hon'ble Supreme Court referred to a three-Judge Bench decision of the Court in case of ***T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board***, reported in (2004)



3 SCC 392 as regards to law relating to amendment of the pleadings. Further referring to ***L.J. Leach & Co. Ltd. v. Jardine Skinner and Co.***, reported in ***AIR 1957 SC 357***, it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it. The Hon'ble Supreme Court further held that the situation was not different in the appeal and as such a suit would be clearly barred by limitation and hence, the Hon'ble Supreme Court did not permit the plaintiff to introduce a time barred claim finding a complacent negligence on part of the plaintiffs apart from delay of more than 15 years. Thus, the learned counsel further submitted that in the present case as well, by way of amendment, the rights created in favour of the defendants/petitioners by lapse of time has been tried to be set at naught.

04. On the other hand, learned counsel appearing on behalf of respondent no.1 vehemently contended that there is no infirmity in the impugned order and the same does not need any interference. Learned counsel further submitted that initially the



suit of the plaintiff/respondent no. 1 was decreed *ex parte* and when the *ex parte* decree was set aside in the year 2013, the defendants filed their written statement and the plaintiff/respondent no. 1 came to know about the execution of sale deed dated 15.11.1983. Learned counsel further submitted that the trial has not commenced and issues are yet to be settled. So, no prejudice would be caused to the defendants. Learned counsel further submitted that the amendments could be allowed at any stage and at the beginning of the suit all amendments are to be allowed. The courts are not supposed to look into the merits of the amendment at the time of allowing amendment application and whether the amendment seeks to introduce a time barred relief is a matter of fact and has to be decided by the court along with other issues. By introducing the said amendment, it could not be said that any new fact was being introduced causing grave prejudice to the defendants which could not be compensated in terms of cost. There is no malafide on part of the plaintiff/respondent. In this regard, learned counsel relied on the decision of Hon'ble Supreme Court in the case of *Abdul Rehman v. Mohd. Ruldu*, reported in (2012) 11 SCC 341 wherein relying on the decision in the case of *Pankaja v. Yellapa*, reported in (2004) 6 SCC 415, the Hon'ble Supreme



Court has held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was also held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title. Learned counsel further relied on a decision of a Co-ordinate Bench of this Court in the case of ***Surendra Bahadur Singh Vs. Yogendra Bahadur Singh (Civil Misc. No. 673 of 2018)*** which was decided on 15.03.2023 wherein the learned Co-ordinate Bench allowed the amendment with regard to time barred claim. Thus, the learned counsel submitted that there is no illegality or infirmity in the impugned order and same needs to be sustained.

05. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case. It would be beneficial to look into the provisions of amendment under Order VI Rule 17 of the CPC, which reads as under :

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleading 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”.

A plain reading of the aforesaid provisions makes it clear that and all such amendments could be allowed as may be necessary for the purpose of determining the real questions in controversy between the parties.

06. The petitioners have mainly assailed the order on the ground that the sale deed was executed on 15.11.1983 and as the same has not been challenged within three years of its execution since it is a registered document, it introduces a time barred claim. It has further been submitted on behalf of the petitioners that even if knowledge to the plaintiff is taken to be in year 2013 when the fact was brought to the notice of the plaintiff in Misc. Case No. 04 of 2009 or when the written statement was filed on behalf of the defendants/petitioners in 2016, as the application for amendment has been filed on 12.02.2021, the relief against the sale deed was clearly time barred.

07. The Hon’ble Supreme Court in the case of ***Pankaja v. Yellapa*** (supra) has occasion to consider the question whether in



cases where the delay is extinguishing the right of the parties by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right which accrued to another party by allowing such belated amendments? Dealing with such question, the Hon'ble Supreme in Paragraph Nos. 14, 15 and 16 of its decision in ***Pankaja v. Yellapa*** (supra) has held as under:-

“14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

15. This Court in the case of L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357] has held: (AIR p. 362, para 16)

“16. It is no doubt true that courts would, as a rule, decline to allow



amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice.”

16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392]. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.”

08. Now, coming back to the facts of the case, though it could be said that the plaintiff/respondent no. 1 has been negligent and his careless and casual approach allowed certain rights to be accrued in favour of the defendants/petitioners, it should always be the endeavour of the Court to make efforts for the purpose of determining the real questions in controversy between the parties and towards these efforts, the Court could grant leave to amend the pleading, unless the same appears to be



malafide or deprives other-side a valid defence. It is also a relevant consideration that where the amendment would enable the court to accurately consider the dispute and would act in rendering more satisfactory decision, the prayer for amendment should be allowed.

09. In the facts of the present case, it is not in dispute that both the parties dispute the title and possession of each other. The defendants have based their title on the registered sale deed executed by the uncle of the plaintiff in their favour and to the extent of 04 decimal of disputed land, the plaintiff also claims purchase from the same vendor. It is also a fact that the suit is at its preliminary stage and issues are yet to be settled. From the facts of the case, though it appears that a time barred claim/relief is being sought to be introduced by way of amendment, considering the initial stage of the suit, the effect could be as if the amended plaint is the original plaint since the trial has not commenced. In such circumstances, the defendants could always raise the issue of limitation. Moreover, the defendants are imputing knowledge to the plaintiff in the year 1983, 2013 and 2016, which is denied by the plaintiff. It is to be borne in mind that rules of procedure are intended to be handmaid to the administration of justice and a party could not



be refused just relief because of some mistake, negligence or inadvertence or even infraction of the rules of procedure.

10. The Hon'ble Supreme Court in the case of ***Ragu Thilak D. John v. S. Rayappan & Ors.***, reported in ***(2001) 2 SCC 472***, in Para-6 has held as under:-

“6., the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for..”

11. Further, the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.***, reported in ***2022 SCC OnLine SC 1128***, 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 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 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.”

12. Having regard to the discussion made here-in-before and considering the fact that the trial is at its initial stage and issues are yet to be framed and the issue of limitation is



wide open, I am not inclined to interfere with the impugned order except modifying it to subject to cost, and hence, the impugned order dated 13.02.2023 passed in Title Suit No. 112 of 1994 is affirmed subject to payment of cost of Rs. 25,000/- to be paid by the contesting respondent to the petitioners on the first date before the learned trial court after receipt/production of a copy of this judgment.

13. Accordingly, the present petition stands disposed of with the aforesaid modification in the impugned order.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	18.07.2024
Uploading Date	22.08.2024
Transmission Date	NA

