

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.96 of 2017

Smt. Bibha Devi, wife of Sri Manoj Kumar Pandey and daughter of Sri Ganpat Sharma resident of Village Dharkandha, Police Station Dawat and District- Rohtas.

... .. Petitioner/s

Versus

Smt. Annu Devi wife of Sri Jagat Niwash, Resident of Village Bairain, Police Station Daudnagar and District Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigendra Kumar, Advocate
For the Respondent/s	:	Mr. Murari Prasad Sinha, Advocate
		Mr. Arun Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 23-04-2024

Heard learned counsel for the petitioner and learned counsel for the respondent on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 06.12.2016 passed by the learned Sub Judge, Paliganj in Title Suit No. 20 of 2014 whereby and whereunder the learned trial court rejected the amendment petition filed by the plaintiff/petitioner.

3. The learned counsel for the petitioner submits that the petitioner is plaintiff before the learned trial court and has filed Title Partition Suit No. 20 of 2014 seeking following reliefs :



“(a) Preliminary decree for partition of 1/3rd share of the plaintiff in the properties in suit detailed in Schedule I & II below be passed in favour of the plaintiff and by appointment of a Survey Knowing Advocate Commissioner a separate takhta of the plaintiff’s be carved out and on preparation of the final decree the plaintiff be put in possession of her separate takhta through the process of the court.

(b) Cost of the suit be awarded to the plaintiff against the defendants.

(c) Any other relief or relief to which the plaintiff is found entitled be passed in favour of the plaintiff”.

4. The learned counsel for the petitioner further submits that in the said partition suit, the petitioner filed an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as ‘the Code’) for making amendment in the plaint, which was rejected by the learned trial court vide order dated 06.12.2016 mainly on the ground that the trial of the suit has already commenced and three witnesses including the plaintiff have been examined and, thus, the amendment petition was hit by the proviso of Order VI Rule 17 of the Code. Further, ground of rejection was that the proposed amendment was likely to change the nature of the suit. The learned counsel further submits that the plaintiff/petitioner is the daughter of defendant nos. 1 & 2 and she is a female member of joint family of the plaintiff and the defendants and she was not having correct idea about the joint family property or the relationship of



ancestors. By way of proposed amendment, only genealogical table was sought to be corrected and, thereafter, details of properties were also sought to be modified. The learned counsel further submits that by no stretch of imagination, it could be said that bringing the amendments would change the nature of suit as the suit was filed for partition and only to bring clarity, the amendments were sought to be incorporated. The learned counsel further submits that though the amendments were brought at a later stage, but the same would be explained as the plaintiff/petitioner is a lady and was not having proper knowledge regarding property or relationship. The delay in moving the amendment could be explained and if the court feels that for deciding the issue, in question, such amendments were necessary, the same ought to have been allowed. The learned counsel relies on the decision of 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*** in which it has been held that the amendment should be allowed to avoid multiplicity of proceedings and if it is required for effective and proper adjudication of the controversy between the parties. The learned counsel further submits that if the amendment is not allowed, certainly it would lead to multiplicity of litigation since the plaintiff/petitioner would be within her right to bring another



suit for partition of properties which are left to be mentioned in the original suit. The learned counsel further submits that by the said amendment there will be no change in the nature of the suit but the learned trial court, under some misconception of law, has held that by way of this amendment, nature of the suit would change.

5. On the other hand, learned counsel for the respondent vehemently opposes the submission made on behalf of the petitioner. The learned counsel for the respondent submits that the amendment petition has been filed at much later stage when the trial has already commenced. Such petition was hit by the proviso of Order VI Rule 17 of the Code which bars amendment after commencement of trial. The learned counsel further submits that the petitioner has failed to show due diligence. The petitioner was already having full knowledge of properties of her father and has given details of suit property in a proceeding under Section 144 of the Code of Criminal Procedure initiated at her instance being Dulhin Bazar Non-FIR No.05/2013. There has been deliberate latches and negligence on part of the petitioner. The learned counsel reiterates that this is not a case of due diligence. Four witnesses on behalf of the plaintiff have already been examined including the plaintiff and allowing the amendment at this stage would seriously prejudice the case of the defendant/respondent.



Thus, the learned counsel submits that the instant petition has got no merit and the same may be dismissed.

6. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case. Before advertng to the submission of the parties, 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”.

7. The law on this point has been settled by various decisions of the Hon’ble Supreme Court and in that series of cases, there is the case is ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.*** (supra) wherein 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)*”

8. In the present case, the learned trial court has refused to allow the amendment petition on the ground of delay and trial having commenced and also on the ground that the amendment would change the nature of suit.

9. The commencement of trial has been discussed by this Court in the case of *Abdul Samad vs. Shukdeo Mahato & Ors. (Civil Misc. No.1744 of 2019)* and it has different connotation. Generally the commencement is understood from the date when the issues are settled and evidence starts. However, there is no straitjacket formula. The Hon’ble Supreme Court in the case of *Baldev Singh & Ors. vs. Manohar Singh & Anr.*, reported in **(2006) 6 SCC 498** has held that the commencement of trial as used in proviso to Order 6 Rule 17 of the Code must be understood in limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and adducing of arguments. At the same time, the Hon’ble Supreme Court held that proviso to Order 6 Rule 17 of the Code confers wide power and unfettered discretion to the court to allow the amendment of written statement at any stage of the proceedings. Even the proviso admits for an exception and allows amendment after the commencement of trial on the ground that the party



applying for amendment, in spite of due diligence, could not have raised the matter before the commencement of trial. In the present case, no doubt trial has commenced, but considering the explanation for moving the amendment not within reasonable time, the explanation could be accepted for the simple reason that the petitioner is stated to be a lady and she might not have knowledge about all the properties which are still in the possession of the joint family or even those properties which have been disposed of but wrongly shown as joint family property in the plaint.

10. Further, so far as contention of learned counsel for the respondent that the petitioner was already having full knowledge of properties of her father and has given details of suit property in a proceeding under Section 144 of the Code of Criminal Procedure initiated at her instance being Dulhin Bazar Non-FIR No.05/2013 is concerned, the learned counsel has not been able to show from the documents of Section 144 Cr.P.C. proceeding that the petitioner was having prior knowledge of details of properties as mentioned in the amendment application. Hence, it could not be said that there was prior knowledge and no due diligence on part of the petitioner.

11. From the facts of the case before me, it is much apparent that the amendment has been sought after the evidence of



plaintiff started and four witnesses have been examined, but it is the suit of plaintiff and if any delay is caused, ultimately the plaintiff would be sufferer. It could not be said that allowing the amendment at this stage would not cause injustice to the other side. However, if the other side could be compensated in terms of cost, the amendment could be allowed. Moreover, it is for the court to decide that such amendment would enable the court to consider the dispute between the parties in true perspective and would help it in arriving at a right decision and allow it to determine the real question in controversy. Further, if such amendment avoids multiplicity of litigation, then these amendments need to be allowed.

12. Further, from bare perusal of the amendment application, I do not find allowing the amendment would change the nature of suit. It is suit for partition and no other relief has been sought, only the details of the properties have been modified. Even after the amendment, it would remain a suit for partition. Hence, the finding of the learned trial court regarding change in the nature of the suit is concerned, I think the same is misconceived. If the amendment is not allowed, it will lead to unnecessary multiplicity of litigation. The amendments also appear to be necessary for the purpose of determination of real controversy between the parties. However, for putting the defendant to undue harassment, I think



the defendant should be amply compensated.

13. In the light of aforesaid discussion, I think the learned trial court committed an error of jurisdiction when it refused to allow the amendment petition and rejected the same. Hence, I do not find the order dated 06.12.2016 is to be sustainable in the eyes of law and, accordingly, the same is set aside subject to payment of cost of Rs. 10,000/-(ten thousand only) to be paid by the plaintiff to the contesting defendant/respondent on the first date before the learned trial court after passing of this judgment. Consequently, the application dated 07.09.2016 filed before the learned trial court is allowed.

14. However, the contesting respondent will be given ample opportunity to rebut/controvert the claim of the plaintiff/petitioner sought to be brought through amendment by way of filing amended written statement/additional written statement.

15. In the result, the instant petition stands allowed.

16. It is made clear that any observation touching upon the merits is only with regard to disposal of the present petition and I have not expressed any opinion on merits on the stand taken by both the parties in suit and it is for the trial court to dispose of the suit on its own merit without being influenced by any of the observations made above at the earliest since it is



a matter of 2014.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	NA
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