

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1574 of 2016

1. Tej Narayan Choudhary and Anr Son of Sita Ram Choudhary
2. Gauri Shankar Choudhary Son of Sita Ram Choudhary Resident of Village Afzala Tola Khewa, Police Station- Biroul, District- Darbhanga.

... .. Petitioner/s

Versus

1. Manjay Mahto
2. Ranjay Mahto, Both Sons of late Bharat Mahto.
3. Mostt Usha Devi, Wife of Late Sanjay Mahto.
4. Bhagwan Babu Mahto, Minor Sons of Late Sanjay Mahto.
5. Kedar Kumar Mahto, Minor Sons of Late Sanjay Mahto Through Meera Kumar, Advocate, G.A.L Benipur.
6. Santosh Mahto Son of Late Ghuran Mahto.
7. Jagdish Mahto Son of Late Banarasi Mahto
8. Pramod Mahto Son of Late Ram Kripal Mahto.
9. Pradeep Mahato Son of Late Ram Kripal Mahto.
10. Vinod Mahto Son of Late Ram Kripal Mahto.
11. Ratan Kumat Mahto, Son of Satya Narayan Mahto @ Satto Mahto.
12. Suresh Kumar Mahto Son of Satya Narayan Mahto @ Satto Mahto
13. Rajesh Kumar Mahto, son of Satya Narayan Mahto @ Satto Mahto.
14. Mukesh Kumar Mahto Son of Satya Narayan Mahto @ Satto Mahto.
15. Dinesh Jaiswal Son of Chandeshwar Jaiswal All are resident of Village Supoul, P.O. and P.S. Biroul, District- Darbhanga.
16. Sahdeo Mahto, Son of Kesho Mahto.
17. Sajjan Prasad Agrawal Son of Late Durga Prasad Agrawal All are resident of Village Afzala Tola Khewa, Post Office Police Station- Biroul, District- Darbhanga.
18. Ganesh Choudhary Son of Late Sita Ram Choudhary.
19. Mostt. Shanti Devi, Wife of Late Nand Lal Choudhary, All are resident of Village Afzala Tola Khewa, Post Office Police Station- Biroul, District- Darbhanga.
20. Shrawan Kumar Choudhary. Son of Late Nand Lal Choudhary. Resident of Village Thika, P.O. Paghari, P.S. Biroul, District- Darbhanga.
21. Smt. Pramila Devi, Wife of Ram Kamal Mandal, Resident of Village Thika, P.O. Paghari, P.S. Biroul, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Singh, Adv.

For the Respondent/s : Mr. Baidyanath Thakur, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 11-11-2024

Heard learned counsel for the parties.

2. The present petition has been filed for setting aside the order dated 31.03.2016 passed by learned Sub Judge Biroul in Title Suit No. 221 of 2012 whereby and whereunder petition filed under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) for amendment in the plaint has been rejected.

3. Learned counsel for the petitioners submits that the impugned order suffers from jurisdictional error as relevant facts and law on the issue involved has not been considered. The petitioners are plaintiffs before the learned trial court and they brought the suit seeking declaration against the defendants over the suit property. One Gena Choudhary who was ancestor of the plaintiffs donated the property for construction of *dharamshala* on which the ancestors of the defendants was made manager. Learned counsel further submits there is a specific averment in the plaint that Gena Choudhary got constructed the *dharamshala* and a well for benefit of *Suri Samaj* and handed over the same to the local *Samaj* and ancestors of the defendants Sumrit Mahto was appointed manager who later on forged the document and claimed the suit property for himself. Since the

property was handed over to the *Sthaniya Samaj* for their benefit, an amendment petition has been subsequently brought by the plaintiffs for incorporating certain amendments in the plaint prior to settlement of issues. The plaintiffs sought the amendment for incorporating the fact about suit being filed on behalf of *Suri Samaj* and that the representatives of the said *Samaj* would be representing the whole community. Further amendment was sought about plaintiffs seeking permission of the Court under Order 1 Rule 8 of the Code for pursuing the matter in representative capacity. Further amendment have been sought in the relief portion about ownership of the *Suri Samaj* over the suit property.

4. Learned counsel further submits that the learned trial court vide the impugned order dated 31.03.2016 rejected the amendment petition mainly on the ground that the claim about representative suit under Order 1 Rule 8 of the Code ought to have been filed at the time of filing of the suit. The learned trial court has further held that all the proposed amendments should have been brought prior to filing of the suit. The learned trial court also stressed the point that the suit property was claimed as personal property of the plaintiffs and if the amendments are accepted, the nature of the suit would

change. Learned counsel further submits that the suit is at the preliminary stage as issues are yet to be framed. Learned counsel further submits that permission for filing a representative suit could be taken even during pendency of the suit and relied on the decision of Himachal Pradesh High Court in the case of ***Ram Piari Vs. Amar Singh*** reported in ***AIR 1978 H.P. 22*** wherein paragraph 4 and 5 reads as under:

*“4.The question is whether the trial Court was right in permitting the plaintiffs to withdraw the suit with permission to file a fresh suit. The relevant provision in O. 23 of the Code provides for permission to a plaintiff to withdraw from a suit with liberty to institute a fresh suit in respect of the subject-matter of such suit where the Court is satisfied “that a suit must fail by reason of some formal defect”. Upon the facts of this case, it seems that it is premature to say that this condition is satisfied. The provision contemplates that the suit must fail, and I am of opinion that so long as the application under O. 1, R. 8 is pending, that cannot be said of the suit. The application was filed with the plaint, and it is the duty of the Court to dispose it of. The omission to do so can be remedied at any stage during the trial of the suit. Ordinarily, leave under O. 1, R. 8 should be sought and its grant considered when the suit is instituted. But the omission to obtain leave at the commencement of the suit cannot serve as a reason for dismissing the suit. No question of jurisdiction is involved. Leave can be granted at any stage after the suit has been filed. That was the view taken by a Full Bench of the Bombay High Court in *Fernandez v. Rodrigues*, (1897) ILR 21 Bom 784 (FB), and that view was followed by the*

Allahabad High Court in Baldeo Bharthi v. Bir Gir, (1900) ILR 22 All 269, and by the Madras High Court in Chennu Menon v. Krishnan, (1902) ILR 25 Mad 399. It was reaffirmed by the Bombay High Court in Hubli Panjarapole v. Saraswateyya Bayappa Kala Ghatki, AIR 1958 Bom 331. The rule has been extended even to appeals: Mookka Pillai v. Valavanda Pillai, AIR 1947 Mad 205.

5. The law being so it was open to the trial Court to dispose of the application under O. 1, R. 8 of the CPC even during the stage of arguments. There was good reason for doing so. The respondents had made an application in that behalf and the application needed to be disposed of. There was no justification at that stage for the Court to dismiss the suit as withdrawn with permission to file a fresh suit. By prematurely permitting the suit to be withdrawn with liberty to file a fresh suit, the trial Court consigned to oblivion all the effort, time and money spent by the parties in the conduct of the original suit. It is pointed out by learned counsel for the respondents that a fresh suit has been filed already and that, therefore, this Court should not grant any relief to this revision petition. That circumstance, to my mind, should not dissuade me from referring the parties back to the original suit.”

5. Learned counsel further referred to the decision of Madhya Pradesh High Court in the case of ***Shantilal Bardichand Mahajan Vs. Champalal Radhaji & Ors.*** reported in ***AIR 1962 M.P. 363*** wherein the learned Division Bench held that permission to proceed in the matter under Order 1 Rule 8 of the Code can even be allowed at the appellate stage and

amendment could be allowed in the plaint. Learned counsel also referred to the decision of Division Bench of Calcutta High Court in the case of ***P.N. Chouna and Anr. Vs. Bengal Free Masons Trust Association*** reported in ***AIR 1983 NOC 74(Cal.)*** on the point that this petition under Order 1 rule 8 of the Code could be allowed during the pendency of suit.

6. Learned counsel further submits that moreover the plaintiffs have also declared their status even in the original plaint and the nature of suit would not change even after amendment since it would remain a suit for declaration against the defendants with regard to the suit property. Thus learned counsel submitted that the impugned order could not be sustained and the same be set aside.

7. Learned counsel appearing on behalf of the respondent nos. 1-14 vehemently contends that there is no infirmity in the impugned order and the same needs no interference. Learned counsel pointed out that the relief portion makes it clear that the plaintiffs claimed the property to be of their ancestors Gena Chaoudhary and it was not the property of society. Further relief has been sought that if the plaintiffs are dispossessed during the pendency of the suit, they would be entitled for recovery of possession. Learned counsel further

submitted that Order 1 Rule 8 of the Code is very clear that there should be a community of interest and the plaintiff have failed to show such interest for bringing the suit under ambit of Order 1 Rule 8 of the Code. Learned counsel further submits that even in the amendment application the plaintiffs have failed to show their interest which is common with other stake holders of the society and they have merely stated that they are members of the *Sthan* without specifically mentioning that they also belong to the same community of *Suri Samaj*. Learned counsel further submits that the amendment with regard to incorporating the averment about Order 1 Rule 8 of the Code has been sought at a very belated stage. Learned counsel again reiterates that the condition necessary for application of the provision under Order 1 Rule 8 of the Code is that the persons on whose behalf the suit is brought must have the same interest and their interest must have a common grievance and referred to the decision of Hon'ble Supreme Court in the case of ***The Chairman, Tamil Nadu Housing Board Vs. T.N. Ganapathy*** reported in ***AIR 1990 SC 642*** on this point. Thus, learned counsel submitted that the present petition is devoid of merits and the same needs to be dismissed.

8. I have given my thoughtful consideration to the

rival submission of the parties and perused the record. The amendment had been sought at the preliminary stage when issues were yet to be framed. So far as the claim of the plaintiffs about their amendment petition is concerned, the same has been rejected by the learned trial court on the ground that the amendment about suit being filed in representing capacity ought to have been brought at the very beginning and not after filing of the plaint. Further the reasoning given for rejection is that for bringing the suit under Order 1 Rule 8 of the Code prior permission of the Court was required. Both the grounds do not deserve further consideration in the light of decisions in the cases of ***Ram Piari*** (*Supra*), ***Shantilal Bardichand Mahajan*** (*Supra*) & ***P.N. Chouna*** (*Supra*).

Moreover background for the amendments have already been laid in the plaint itself and no where in the plaint the plaintiffs have claimed their personal interest in the suit property and has specifically mentioned that their ancestor left the property for the benefit of the *Suri Samaj*. So far as the amendment changing the nature of the suit is concerned as mentioned by the learned trial court in the impugned order the same observation is misconceived, there would be no change in the nature of the suit even if amendments are allowed. The suit

has been filed seeking declaration of title against the defendants and if the plaintiffs relinquish their personal claim in favour of the society as was done by their ancestor, the same is not going to cause prejudice to the defendants in any manner.

9. Now, Order 1 Rule 8 of the Code reads as under:-

“8. One person may sue or defend on behalf of all in same interest.

(1)Where there are numerous persons having the same interest in one suit,-

(a)one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b)the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2)The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at

the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be."

From the bare perusal of the provision, the object is very much clear that the provision has been incorporated to avoid multiplicity of litigation and the provision is in the public interest.

10. The contention of the learned counsel for the respondents that there is no community of interest or common interest does not reflect from the facts brought on record. Moreover, the claim of the defendants/respondents that the plaintiffs are not having any interest should be taken with a pinch of salt. This objection should have been raised by any other member of the same community if his interest were to be effected but not by the defendants because their title stands already challenged in the present suit. For the aforesaid reason, the reliance placed by learned counsel in the case of ***The Chairman, Tamil Nadu Housing Board (Supra)*** is not much relevance.

11. Therefore, in the light of the aforesaid discussion and since the trial is at its preliminary stage, I am of the considered opinion that the learned trial court committed an error of jurisdiction when it refused to entertain the application filed for amendment on behalf of the plaintiffs and hence, the impugned order dated 13.03.2016 is not sustainable and the same is set aside. Consequently, the application dated 04.01.2016 stands allowed.

12. The defendants/respondents will be given ample opportunity to rebut/controvert the claim of the plaintiffs/petitioners sought to be brought through amendment by way of filing amended written statement/additional written statement.

13. With the aforesaid observation/direction, the present petition stands allowed.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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