

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1562 of 2016**

Vakil Mahto, S/o Late Dhuri Mahto, R/o Village-Belwa Rai Khas, P.S. Turkawaliya, District- East Champaran.

... .. Petitioner/s

Versus

1. Most. Ramawati Kuwar, W/o Late Ramchandra Mahto.
2. Upendra Mahto
3. Bhulan Mahto.
4. Sunil Mahto.
5. Mukesh Mahto
6. Nayan Mahto, S/o Late Ramchandra Mahto,  
All r/o Belawa Rai Khas, P.S. Turkawaliya Dist East Champaran.
7. Smt. Sabita Devi, W/o Sudama Mahto D/o late Ramchandra Mahto, r/o  
Olaha Mishri Tola, P.S. Harsidhi, District- East Champaran.
9. Birendra Mahto, S/o Late Gadpat Mahto.
10. Bhukhal Mahto, S/o Late Bhaidai Mahto,  
All R/o Belwa Rai Khas, P.S. Turkawaliya, Dist. E. Champaran.
11. Smt. Urmila Devi, W/o Jagat Mahto, D/o Late Gadpat Mahto, r/o Bahrupiya,  
P.S. Turkawaliya, Dist. E. Champaran.
12. Smt. Bachiya Devi, W/o Bikaram Mahto D/o Late Gadpat Mahto, R/o Vill  
Nandpur, P.S. Sangarmpur, Dist. E. Champaran.

... .. Respondent/s

**Appearance :**

|                      |   |                                   |
|----------------------|---|-----------------------------------|
| For the Petitioner/s | : | Mr.Dhannjay Kumar No. 2, Advocate |
| For the Respondent/s | : | Mr. Suman Kumar, Advocate         |
|                      |   | Mr. Subodh Chandra Jha, Advocate  |
|                      |   | Mr. Amar Nath Singh, Advocate     |

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 24-09-2024**

Heard learned counsel for the petitioner and learned  
counsel for the respondents.

2. The present petition has been filed under Article  
227 of the Constitution of India for quashing the part of the  
order dated 05.11.2016 passed by learned Sub Judge-13,



Motihari, East Champaran in Title Suit No. 661/2012 whereby and whereunder the learned trial court has partly allowed and partly rejected the amendment petition dated 02.08.2016 filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

3. The learned counsel for the petitioner submits that the petitioner is one of the plaintiffs before the learned trial court and after filing of the written statement, an application for making amendment in paragraphs 4 and 5 has been made. The learned counsel further submits that though the learned trial court allowed the second amendment regarding paragraph 4, the first amendment for deleting certain portion of paragraph 5 and inserting new facts in paragraph 5 has been rejected. The learned counsel further submits that the learned trial court has rejected the amendment on the ground that the plaintiff wants to take back the admitted facts. But the reasoning adopted by the learned trial court is wrong as the suit is still at the preliminary stage and the issues have not been framed. The proposed amendment is required to avoid future litigation and the multiplicity of the cases. The learned counsel further submits that the claim of both sides is over the government land and the earlier statement made by the plaintiffs in their plaint is without



proper knowledge of the documents and facts. As soon as the plaintiffs came to know about the real fact, they moved amendment petition. The statement of the plaintiffs based on wrong facts could always be amended. Thus, learned counsel submits that the impugned order is not sustainable and the same be set aside so far as that part of the order is concerned whereby and whereunder the amendment in paragraph 5 has been refused.

4. On the other hand, learned counsel appearing on behalf of the respondents vehemently opposes the submission made on behalf of the petitioner. The learned counsel for the respondents submits that there is specific admission of the plaintiffs in paragraph 5 that in Khesra No. 1863 from the western portion of the settled land of the ancestors of the plaintiff Mangar Nuniya, 2 katha 7 dhur was also settled in favour of the ancestor of defendant and Jhapsi Mahto, ancestor of the defendant was also in possession of the suit land. The learned counsel further submits that there is clear admission in favour of the defendants that their ancestors have been coming in possession of 2 katha 7 dhur of land which was settled in their favour and the petitioner wants to delete the clear admission in favour of the defendant. The learned counsel relies



on the decision of this Court in the case of ***Sri Yogendra Prasad Sinha vs. Sri Girdhar Pd. Sinha*** reported in ***2011 (1) PLJR 1044*** in support of his submission that inconsistent plea can be allowed to be taken in the written statement, the same is not available in the plaint. The learned counsel further refers to the decision of this Court in the case of ***Smt. Bibha Devi vs. Smt. Annu Devi*** reported in ***2024 (5) BLJ 74*** wherein this Court enumerated the conditions under which the amendment could be allowed. Thus, learned counsel further submits that there is no infirmity in the portion of the order whereby and whereunder the prayer of the petitioner was rejected regarding making amendment in paragraph 5. The learned counsel further submits that after three years of filing of the written statement, the present amendment has been sought as the defendants claim settlement in their favour and now the plaintiffs want to challenge the said settlement which has become time barred. The learned counsel further submits that the plaintiffs want to bring contradictory pleading in their plaint through this amendment.

5. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case and perused the records.



6. 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 amendment prior to commencement of the trial is at the discretion of the court which is to be exercised judiciously. This discretion is to be exercised so as to decide the real controversy between the parties. The objection of the learned counsel for the respondents to the amendment is mainly on the ground that the plaintiffs made certain admission with regard to their possession and settlement of the land in their favour and the written statement has been filed on behalf of the defendants. Now, what is meant by admission? An admission in a pleading is a statement that accepts or admits the facts



presented by other side. Thus, it is a concession or acknowledgment of a fact or allegation. Therefore, if certain averment has been made in the plaint, the same will remain mere statement till some right accrues to the other side on the basis of such averment. The suit is at the primary stage. If some averment has been made in favour of defendants, which the plaintiffs claim to be made due to wrong information, such averment could not be said to be admission. When the plaint has been filed, any statement in the plaint if the plaintiffs feel is based on wrong assumption of facts and amendment is sought to modify such statement, change in such statement would have the same effect as if the suit has been filed with the said averment considering the fact that the suit is still at its initial stage. In other words, if the plaintiff is allowed to amend that statement/averment, at the beginning of the suit, it has the same effect as if the suit has been filed with the amended plaint. For this reason, I am of the view that the claim of the learned counsel for the respondents is not sustainable and for the same reason, the authorities cited by the learned counsel would not be applicable in the facts of the case. In the case of ***Sri Yogendra Prasad Sinha*** (supra), the issue was about the amendment in the written statement which was disallowed by the learned trial



court and subsequently came to be allowed by this Court. In the case of *Smt. Bibha Devi* (supra), general proposition about the conditions under which the amendment could be allowed has been reiterated. When the suit is at the initial stage, for determination of the real controversy between the parties, such amendment could be allowed and, for this reason, I am of the view that the learned trial court erred on this point while holding it to be withdrawal of admission. Therefore, considering the stage of suit, the amendment could be allowed, but considering the delay with imposition of cost.

8. In view of the discussions made here-in-before, I am of the considered opinion that the learned trial court committed an error of jurisdiction while passing the impugned order. Hence, the part of impugned order dated 05.11.2016 is set aside to the extent that amendments sought in paragraph 5 are also allowed subject to payment of cost of Rs. 10,000/-(ten thousand only) to be paid by the plaintiff/petitioner to the contesting defendant/respondent on the first date before the learned trial court after passing of this judgment, since the amendment has been sought after passage of almost three years of filing the written statement though issues have not been framed.



9. However, the respondents 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.

10. With the aforesaid observations and directions, the instant petition stands allowed.

11. However, 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 of the stand taken by both the parties in suit.

**(Arun Kumar Jha, J)**

V.K.Pandey/-

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| AFR/NAFR          | AFR        |
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