

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.900 of 2017

1. Md. Hussain, S/o late Sakur Ali,
 2. Md. Shahid, S/o late Rafique,
 3. Raitun Khatoon, son of Late Md. Safique
- All are residents of village- Sultanpur, P.O. and P.S.- Andar, District- Siwan.

... .. Petitioner/s

Versus

- 1.1. Prabhawati Devi W/o Late Ram Kailash Bhagat R/o Village- Sultanpur, P.O. and P.S.- Andar, District- Siwan.
- 1.2. Indu Devi D/o Late Ram Kailash Bhagat R/o Village- Sultanpur, P.O. and P.S.- Andar, District- Siwan.
- 1.3. Uma Devi D/o Late Ram Kailash Bhagat R/o Village- Sultanpur, P.O. and P.S.- Andar, District- Siwan.
- 1.4. Parama Devi D/o Late Ram Kailash Bhagat R/o Village- Sultanpur, P.O. and P.S.- Andar, District- Siwan.
- 1.5. Kiran Devi D/o Late Ram Kailash Bhagat R/o Village- Sultanpur, P.O. and P.S.- Andar, District- Siwan.
- 1.6. Sima Devi D/o Late Ram Kailash Bhagat R/o Village- Sultanpur, P.O. and P.S.- Andar, District- Siwan.
2. Nathuni Ahmad, S/o Late Nejamuddin R/o Village- Hussainganj, P.O.- Hussainganj, P.S.- Hussainganj, District- Siwan.
3. Doda Ahmad, S/o Late Nejamuddin R/o Village- Hussainganj, P.O.- Hussainganj, P.S.- Hussainganj, District- Siwan.
4. Jhuar Ahmad @ Bhaur, S/o Late Nejamuddin R/o Village- Hussainganj, P.O.- Hussainganj, P.S.- Hussainganj, District- Siwan.
5. Expunged.
6. Expunged.
7. Noor Fatama, D/o late Najamuddin, W/o Samsul Haque R/o Village and P.O.- Sultanpur, P.S.- Andar, District- Siwan.
8. Satar Mian, S/o late SK. Maula Mian R/o- Village- Sultanpur, P.O. and P.S.- Andar, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Chandra Kant, Advocate Mr. Navin Kumar, Advocate Mr. Sudhanshu Prakash, Advocate
For the Respondent 8	:	Mr. Sanjeet Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 21-11-2024



Heard learned counsel for the petitioners and learned counsel for the respondent no.8.

2. The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 10.03.2017 passed by learned Additional District Judge-III, Siwan in Title Appeal No. 91/2014 whereby and whereunder the learned appellate court rejected the application dated 08.12.2016 filed by the petitioners under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

3. The petitioners were defendants in Title Suit No.275 of 1978 which was decreed in favour of the plaintiff and the defendants preferred Title Appeal No.91 of 2014. During pendency of the appeal, the petitioners filed an application dated 08.12.2016 under Order 6 Rule 17 read with Section 151 of the Code. After hearing both the sides, the learned first appellate court rejected the amendment application which is under challenge before this Court.

4. The learned counsel for the petitioners submits that the impugned order is not sustainable as it is a non-speaking and cryptic order. The learned first appellate court failed to consider that the appeal is in continuance of the suit and if the appeal is



pending then there is presumption that the suit is still continuing and in the light of this legal position, the learned first appellate court should have considered the amendment application. The learned counsel further submits that since the suit was filed prior to amendment in the Code of Civil Procedure in the years 1999 and 2002, the proviso to Order 6 Rule 17 would not be applicable in the present case. The learned counsel further submits that the petitioners have sought to add some paragraph with respect to earlier partition deed which had already been mentioned in the written statement of the petitioners and the amendment was by way of clarification providing specific details. The background has already been laid in the written statement. This fact was ignored by the learned first appellate court. The petitioners were not having knowledge about the registered partition deed of 1954 which was executed between Yad Ali and his sons, namely Maula Mian and Kitab Ali. The learned counsel further submits that in paragraph 17 of his written statement, the petitioners have mentioned that the disputed property of Survey Plot No. 1080 belonged to Yad Ali Mian and his descendants after it was purchased in the name of Maula Mian. The property was partitioned between two branches and the ancestral house was in joint possession of both



the branches. But as the document of earlier partition of 05.04.1954 between Yad Ali and his sons Maula Mian and Kitab Ali were misplaced and the petitioners found the documents along with other old documents from an old box while cleaning the house on the occasion of *Muharram*, they moved the amendment petition which was wrongly rejected by the learned first appellate court. The learned counsel further submits that the learned first appellate court has rejected the application on completely illegal ground that the title suit was not pending before it and it was disposed of and whatever written statement has been filed in the title suit, the same cannot be amended on new facts. The learned counsel further submits that in Title Suit No. 37/2014, the petitioners are defendants and they also filed the amendment application with the same prayer and the said amendment has been allowed by the learned trial court. But in another proceeding in the appellate court, rejection of amendment for the same purpose could not be sustained. The learned counsel further submits that learned Single Judge of this Court allowed the amendment at the appellate stage and refers to the decision *dated 21.02.2018* passed in *Civil Misc. No.1185 of 2016 with analogous case*. On the same proposition, the learned counsel also refers to the decision of learned Single



Judge of this Court in the case of ***Baidya Nath Prasad Shrivastava vs. Subh Chandra Mishra*** reported in **2013 (3) PLJR 97**. The learned counsel further submits that if the amendment is supported with the document, that can be allowed and refers to the decision of the learned Single Judge of this Court in the case of ***Lallan Prasad vs. Sri Mangla Prasad and Ors.*** reported in **1990 PLJR 257**. Thus, learned counsel submits that the impugned order is not sustainable and the same needs to be set aside.

5. On the other hand, learned counsel appearing on behalf of the respondent no. 8 vehemently contends that there is no illegality in the impugned order and the same is correct and legal. The learned counsel further submits that the present amendment petition before the learned first appellate court was brought by the petitioners for permitting them to mention in the written statement about the documents executed on 05.04.1954 which is a registered partition deed. But the said amendment has been sought after 46 years as written statement has been filed in the year 1979 in a title suit of the year 1978. The purpose of the filing of the amendment petition is only to delay the adjudication of *lis*. The proposed amendment is based on a document which is not permissible at the appellate stage. The



learned trial court has not framed any issue relating to the partition in the suit and there is no evidence on record relating to the said partition in the year 1954. By introducing the amendment, the petitioners had been trying to set out a new defence, which is not permissible at the appellate stage. The learned counsel further submits that the petitioners want to introduce new facts in the written statement which is not permissible in the eyes of law at this belated stage and as the appeal has been filed after the amendment in the Code of Civil Procedure, such amendment would be hit by proviso to Order 6 Rule 17 of the Code. If the amendment at this stage is permitted, the same would completely change the nature of original defence. The learned counsel further submits that the petitioners have filed the petition for amendment in two simultaneous proceedings for the same relief and such tendency should be deprecated. It seems the petitioners want to fill up the lacunae in their written statement, which should not be allowed. The learned counsel relies on the decision of the Coordinate Bench of this Court in the case of ***Harihar Nath Rai vs. Most. Devmuni Kuer & Ors.*** reported in ***2023 (3) PLJR 546*** wherein the Coordinate Bench, on the ground of delay in bringing the amendment, sustained the order of the learned trial court



rejecting such amendment.

6. I have given my thoughtful consideration to the rival submission of the parties and perused the records. 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. Normally, the Courts are liberal in allowing the amendment, if it is necessary for the purpose of determining the real questions in controversy between the parties.

8. In the present case, when the petitioners as defendants have mentioned about partition with regard to the suit property and their subsequent claim, the amendment seems to be by way of clarification and could not be said to be introducing any new facts.



9. It is also the settled law that unless the amendment is malafide or introduces a time barred claim, the same should not be allowed at the belated stage. At the same time, merits of the amendment are not to be looked into by the court at the stage of considering the amendment petition.

10. Since I do not find the amendment is malafide or introduces a time barred claim, considering their clarificatory nature, the same could be allowed and I think the learned first appellate court committed error of jurisdiction while rejecting the amendment application. Moreover, the impugned order suffers from patent illegality as the learned first appellate court rejected the amendment application on the ground that it was not hearing the title suit and the same was not pending before it.

11. It is settled law that the amendment could be allowed even at the stage of second appeal if it is necessary for the purpose of determining the real questions in controversy between the parties.

12. From the facts of the case before me, it is much apparent that the amendment has been sought after so many years of filing of the written statement and the claim of the petitioners that they found the documents while cleaning the house and now they want to introduce the said documents



through amendment at this belated stage, the other side must be compensated in terms of cost. 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.

13. I think if the amendment is not allowed, it will lead to unnecessary multiplicity of litigation. The amendment also appears to be necessary for the purpose of determination of real controversy between the parties. However, for putting the respondents to undue harassment, I think the respondents should be amply compensated.

14. The authority cited by the learned counsel for the respondent no. 8 does not appear to be applicable as the amendment was rejected not only on the ground of delay but it was also found to be malafide and earlier also amendment was allowed.

15. 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 impugned order dated 10.03.2017 to be sustainable in the eyes of law and, accordingly, the same is set aside. Consequently, the application dated 08.12.2016 filed before the learned appellate court is allowed subject to payment of cost of Rs. 50,000/-(fifty thousand only) to be paid by the petitioners to the contesting respondent on the first date before the learned first appellate court after passing of this judgment.

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

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2024
Transmission Date	NA

