

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.731 of 2018

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Yogendra Bahadur Singh, S/o- Late Shyam Sunder Singh, resident of Village
and P.O.- Barhauna, P.S.- Chainpur, District- Kaimur.

... .. Petitioner/s

Versus

1. Surendra Bahadur Singh, S/o Late Shyam Sunder Singh,
2. Pratik Kumar Singh,
3. Ambar Raj Singh Both S/o Surendra Bahadur Singh, All residents of
Village- Barhauna, P.O.- Barhauna, P.S.- Chainpur, District- Kaimur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Patanjali Rishi, Advocate
For the Respondent/s	:	Mr. Arbind Nath Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 11-01-2024

The instant petition has been filed against the order dated 12.02.2018 passed by learned Sub-Judge-IIInd, Bhabhua in Title Suit No. 90 of 2003 by which the petition dated 23.11.2015 filed on behalf of the petitioner under Order VI Rule 17 and Section 151 of the Code of Civil Procedure for the amendment of written statement, additional written statement and counter claim was partly allowed and was partly rejected in respect of certain amendment in the additional written statement.

2. The facts of the case as it appears from the record is that the petitioner and respondent no.1 are full brothers. Respondent nos. 2 and 3 are sons of respondent no.1 The plaintiff/respondent filed a suit for partition in respect of



properties said to be the joint family property in the court of learned Sub-Judge-Ist, Bhabhua on 07.05.2003 vide Title Suit No. 90 of 2003. Petitioner is defendant no.1. The plaintiffs and the defendants are the descendants of late Shyam Sunder Singh. The plaintiffs claimed that they are members of joint family and the plaintiff no.1 is the karta of the family. The defendant nos. 1 to 3 are also the members of joint family and the defendant no.1 is the karta. The plaintiffs claimed in their plaint that the properties described in Schedule 'Ka' and 'Kha' of the plaint are joint family properties which have not been partitioned by metes and bounds. The father of plaintiff no.1 and defendant no.1 died in 1971 in jointness and their mother died on 20.10.2001. The plaintiffs further claimed that the plaintiffs and the defendants separated in mess and residence and started cultivating their land separately for last few years but no partition has taken place between the two sides by metes and bounds. Out of joint family fund, a piece of land at Bhabhua was purchased and a house was constructed by joint family fund. After the death of the mother and sister of plaintiff no.1 and defendant no.1, they inherited their share. During land ceiling proceeding, sale deed of Paras Nath Singh and Shambhu Singh was held illegal and the possession of the family of the plaintiffs was declared on the



said land and it was held to be their property. The plaintiffs further claimed that father of the plaintiff no.1 and defendant no.1 during his lifetime on 07.08.1962 gifted 25.62 acres to defendant no. 4 and 20.87 acres to mother of plaintiff no.1 by deed nos. 5325 and 5322 and put the donees in possession thereof. For this reason he had no right to execute gift deed no. 5328 dated 07.08.1962 in the name of defendant no. 1 who was a minor at that time and the said document is a void document. Defendant no.1 never came into possession of the said land. In this manner, plaintiffs claimed 5/12 share in the suit properties and prayed for a decree for partition.

The petitioner/defendant no.1 and his elder son/ defendant no.2 appeared in the suit and they filed their joint written statement on 24.02.2004. The defendants claimed that plaintiffs and defendants separated in mess, residence and cultivation in 1979. The properties described in Schedule-‘*Kha*’ of the plaint were allotted to defendant no.1 and his sons by oral partition. Further, the properties of Schedule-‘*Ka*’ are not joint family property. Some of the properties of Schedule-‘*Ka*’ are the acquired property of defendant no.1 through gift. One of the properties was sold by the father of plaintiff no.1 and defendant no.1. The defendant no.1 is coming into possession of self-



acquired property and the same was not liable to be partitioned. The defendant further claimed that mother of defendant no.1 died in June, 1989 while residing in her matrimonial home. The defendant further claimed that plaintiffs have deliberately left to include joint property in Schedule-Ka' situated at Akhlaipur having total area of 5 acres of Plot No. 3166, Khata No. 930 which is purchased property of Shyam Sunder Singh. Mother of plaintiff no.1 and defendant no.1 was not allotted separate unit in total 79.64 acres but in plaint only 51.32 acres has been mentioned. Further, Shyam Sunder Singh sold the land to Shambhu Nath Singh. Plaintiff no.1 and defendant no.1 sold land in favour of Paras Nath Singh and the purchasers were put in possession of their respective lands. Thereafter, Shambhu Nath Singh executed a power of attorney in favour of defendant no.1 after receiving sale consideration amount from wife of defendant no.1 and on 09.12.2000 and 16.12.2000 executed sale deeds in favour of wife, son and daughter of defendant no.1. Defendant no.1 further claimed land of Khata No. 64 by registered gift dated 09.08.1962. Further, claim of defendant is that the description of joint property is not correct except a few and the plaintiffs have wrongly included the personal and exclusive property of defendant no.1, defendant no.2 and wife



of defendant no.1, the daughter of defendant no.1 and Paras Nath Singh and defendant no.2 in Schedule-‘Ka’. Plaintiffs have no share in Schedule-‘Kha’ properties which were allotted to defendant no.1 in partition. Thus, the plaintiffs have no share as claimed to the extent of 5/12 in Schedule-‘Ka’ as entire land of Schedule-‘Ka’ are not a joint property. There is no unity of title and possession. The property described in Schedule- ‘A’ of the written statement is the joint family property whereas land of village Ismyalpur under Khata No. 43 is exclusive property of defendant no.1 which he acquired through gift deed executed by Kuwari Kunwar. As per oral partition of 1990, plaintiffs have been residing in the ground floor and the defendants on the upper floor of the house situated at Bhabhua.

3. Further, the case of the petitioner is that plaintiffs filed petition for amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure which was allowed by the learned court below by order dated 03.08.2004 with an option to the defendants to file additional written statement. Accordingly, the defendant nos. 1 and 2 filed an additional written statement on 22.11.2004 in respect of amended portion of the plaint controverting the allegations and statements of the plaintiffs added in amended paragraph nos. 12 ‘Ka’, ‘Kha’, ‘Ga’ and



‘Aga’ of the plaint. But due to inadvertence some wrong and contradictory statements came to be included in the additional written statement. The petitioner has also filed counter claim in the said suit in addition to his written statement and additional written statement in respect of left over properties of the plaintiffs in the plaint. On 23.11.2015, the petitioner filed a petition for amendment of written statement, additional statement and counter claim under Order VI Rule 17 of C.P.C. in order to correct inadvertent mistakes in the pleadings. The respondents/plaintiffs filed a rejoinder dated 29.02.2016 to the said amendment petition dated 23.11.2015. After hearing the parties, the learned court below by impugned order dated 12.02.2018 allowed the proposed amendment in written statement and counter claim with cost of Rs. 3,000/- but refused to allow amendment in the additional written statement. The petitioner is aggrieved by the said order dated 12.02.2018 rejecting the aforesaid amendment.

4. Learned counsel appearing on behalf of the petitioner submitted that the impugned order passed by the learned Sub-Judge-IIInd, Bhabhua is erroneous in law and also on facts. The learned court below committed an error in disallowing the proposed amendment no.2 in the additional written statement



filed by the defendant. The learned court below ought to have allowed the amendment petition in toto in order to avoid confusion and contradiction in the pleadings. In the original written statement the petitioner has specifically stated that Kuwari Kunwar had gifted her properties of village Ismyalpur appertaining to Khata No. 43 to the defendant no.1/petitioner upon which he has been coming in exclusive possession. But due to inadvertence a contradictory statement was wrongly made in the additional written statement which has been sought to be retracted by the proposed amendment which shall neither change the nature of the suit nor it would cause prejudice to the plaintiffs. Additional written statement was filed after amendment of the plaint and while controverting newly added statement of the plaintiffs, due to sheer inadvertence of the concerned advocate, contradictory statement was mentioned in the additional written statement touching upon the ownership and right of Kuwari Kunwar and the petitioner was advised to delete the wrong and contradictory statement from the additional written statement by proposed amendment no.2 which does not amount to withdrawal of admission.

5. Learned counsel for the petitioner further submitted that defendant has liberty to withdraw any wrong admission



made earlier in the pleadings. Learned counsel further submitted that in the written statement, defendant has liberty to make even contradictory statements and to retract any admission.

6. Learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in the case of ***Usha Balashaheb Swami and Ors. vs. Kiran Appaso Swami and Ors.***, reported in (2007) 5 SCC 602. Paragraph no.19 of the said judgment reads as under:-

“19. It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.”

7. Learned counsel further submitted that moreover, there is no retraction of any admission since the inconsistent pleading, which appears to be a question of law and should not have been part of the additional written statement in first place, has been sought to be withdrawn. Further, the amendment would not cause any prejudice to the plaintiffs/respondents. What has been sought to be withdrawn is a question of law since issue of succession is the matter in issue and for this no pleadings are required. Thus, learned counsel submitted



that impugned order rejecting the proposed amendment is otherwise bad in the eyes of law and is not sustainable.

8. Learned counsel for the respondents/plaintiffs vehemently contended that there is no illegality in the impugned order and the same does not need any interference. Learned counsel for the respondents further submitted that the proposed amendment sought to be introduced in the written statement has been filed at a very belated stage. The defendants have time and again sought amendment in their pleading and five times such amendments have been allowed and the instant case is the 6th occasion. After the evidence has been closed, this amendment has been proposed. The proposed amendment is hit by proviso to Order VI Rule 17 of the C.P.C. as the petitioner has failed to show that he could not have introduced the amendments prior to the commencement of trial. Learned counsel further submitted that after commencement of trial there is no scope for amendment unless due diligence on the part of the petitioner is shown. On this aspect, reliance has been placed on a decision of the Hon'ble Supreme Court in the case of ***Ajendraprasadji N. Pandey and Ors. v. Swami Keshavprakeshdasji and Ors.*** Reported in ***AIR 2007 SC 806.***

9. Learned counsel further submitted that the plaintiffs claimed that the entire property of late Harihar Singh after death of his wife Kuwari Kunwar devolved upon the legal heirs of brothers of Harihar Singh, namely, Shivparsan Singh and Ram Naresh Singh.



This fact was admitted by the defendants in paragraph no. 3 of their additional written statement and now they want to withdraw this admission. On such impermissibility, learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Modi Spinning & Weaving Mills Co. Ltd. And Ors. Vs. Ladha Ram & Co.*** reported in ***AIR 1977 SC 680***.

10. Learned counsel further submitted that the petitioner is under apprehension that he will lose the case and for this reason he wants to linger on the matter and kept on filing amendment petition from time to time. Thus, learned counsel for the respondents submitted that the impugned order is correct and it needs to be sustained.

11. Learned counsel for the petitioner, by way of reply, reiterated that the defendants could withdraw or explain an admission made in the written statement. In this regard, learned counsel again relied on the decision of the Hon'ble Supreme Court in the case of ***Usha Balashaheb Swami and Ors. vs. Kiran Appaso Swami and Ors. (supra)***.

12. Having regard to the facts and circumstances and submissions made on behalf of the parties, the limited questions which arise in this case is whether the proposed amendment seeking deletion of major portion of paragraph no.3 of written statement could be said to be withdrawal of statement and whether it would prejudicially effect the other side and the same is highly belated.



13. The petitioner/defendant no.1 wants to delete the portion of paragraph no.3 of his additional written statement which reads as under:-

बाबू श्यामसुन्दर सिंह ने ब-अदालत सब जज सासाराम टांडीय
 सूट नं०- 53/54 बेंदवारा वास्ते मोतदमा दायर किया था ,
 जिसमें सुलहनामा के आधारपर फाईनल डिक्ली दिनांक-29-9-1955
 जो तैयार हुआ जिसमें सिद्धूल "बी" सुलहनामा से बाबू हरिहर
 प्रसाद सिंह को हिस्से को तत्वे में भिन्ना था वो फाईनल डिक्ली
 के लगभग एक माह के बाद अपनी पत्नी कुमारी कुंवर को अपने
 भतीजा श्याम सुन्दर सिंह के साथ रहकर स्वर्गवास कर ^{गई} ~~गई~~ वो
 इस तरह से कुमारी कुंवर अपने सौहर के जायदाद की ~~absolute right~~
~~absolute right~~ हुई वो कुमारी कुंवर को सौहरी जायदाद पर
~~absolute right~~ नहीं ^{हुआ} ~~हुई~~ वो न तो
 उन्हें अंतरण करने का कोई हक वो अधिकार ~~रखी~~ हुआ वो
 कुमारी कुंवर बाबू श्याम सुन्दर सिंह के साथ रहकर गर्भवत
^{1956 के अंतिम सप्ताह} में स्वर्गवास कर गई वो बाबू हरिहर प्रसाद
 सिंह के जायदाद पर दखल कब्जा बाबू श्याम सुन्दर सिंह को बाबू
 राम नरेश सिंह का निष्पक्ष - निष्पक्ष पराजी पर हुआ वो कुमारी
 कुंवर को दिनांक- 21-3-56 को बाबू हरिहर प्रसाद सिंह के



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मौखिकी कायदा को मुद्दा नं०- 1 सुरेन्द्र बहादुर सिंह को
नहीं नष्टीर को रजिस्ट्री करने का कोई एक को अधिकार नहीं
था जो कुमारी कुश के द्वारा सुरेन्द्र बहादुर सिंह के एक में
निकषादित (निर्णय) दिनांक- 21-3-56 गैर कानूनी ज्ञा केला-
विचार के विधि गन्व दस्तावेज है जो - Witness statement
document----- है। जो बाबू हरिहर प्रसाद सिंह के कायदा
पर मुद्दा नं०-1 सुरेन्द्र बहादुर सिंह का सभी लानदा दस्त ब्रह्मा
नहीं हुआ। बरिफ फ्रीकैन लोकदमा के प्रमाणन दास्त ब्रह्मा
को जोत- कोई मिला आ रहा है। मन मुदातयनं०-1 पीरवार
का प्रीनपर भम्बर है जो कपिल मुनि-पत्रेनीपस्ते कुमारी कुश
ज्ञानी सुरेन्द्र बहादुर सिंह के दान - पत्र की जानकारी पूछ-ताउ
करने से मन मुदातय नं०-1 को अब हुई है। जिसका नवल बजापते
हासिल करने वाली मन मुदातय गता लगवा रहे है। जो रैवत
से भी प्यार सुरेन्द्र सिंह द्वारा जिससे से जयादा अंतरण करने
का कोई तवाश पैदा नहीं होता है। मौजा - बाबूदुर , पुराना
खता नं०- 19 पुराना पत्तौट नं०- 33 रकबा - 10 एकड़ 1कावा
करेलागोंडंग रीरिपजनल सर्वे खाता नं०- 44 रीरिपजनल सर्वे पत्तौट
नं०- 43 जो जिसका प्रकृ खाता नं०- 44 चक पत्तौट नं०- 31
रकबा 9-75 डीप/फ्रीकैन मुकदमा की संयुक्त कायदाद करने पर

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एराधिकरण के रीरिपजनल कुश को दिनांक- 21-3-56 को
मुद्दा नं०-1 को दान - पत्र नष्टीर को रजिस्ट्री करने का कोई
एक को अधिकार नहीं था।

14. I find merit in the submission of learned counsel for
the petitioner that what is being sought to be deleted concerns
a point of law and it ought not to be the part of the pleadings, to



begin with. Further, the portion sought to be deleted on a bare perusal read with earlier written statement, shows some dispute regarding the assignment of certain property in favour of the plaintiff/respondent no.1.

15. I fail to understand how the aforesaid amendment is going to cause prejudice to the plaintiffs/respondents. Moreover, if the amendment is not allowed, two sets of pleadings, which are contradictory to each other, would come on record and cause unnecessary confusion and will cause hindrance in just and proper disposal of the dispute before the learned lower court. Moreover, it cannot be said to be withdrawal of admission because what has been stated in the additional written statement was with regard to certain issues involving succession and ownership rights of a female Hindu. It cannot be considered admission and the defendant is within his rights to withdraw the same and the decision of Hon'ble Supreme Court in the case of ***Usha Balashaheb Swami and Ors. vs. Kiran Appaso Swami and Ors.***, reported in (2007) 5 ***SCC 602***, supports the contention of the learned counsel for the petitioner and paragraph nos. 21 and 22 of the said decision read as under:-

"21. As we have already noted herein earlier



that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the courts in the administration of justice between the parties. In L.J. Leach & Co. Ltd. v. Jardine Skinner & Co. [AIR 1957 SC 357] this Court observed that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event”.

In that case this Court also held that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice.

22. Keeping these principles in mind, namely, that in a case of amendment of a written statement the courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed, we may now proceed to consider whether the High Court was justified in rejecting the application for amendment of the written statement.”



16. It has been submitted on behalf of the respondents that the amendment has been moved at a belated stage when the trial has commenced and evidence has been closed. For just and proper disposal and other respective cause of substance, amendment can be allowed even at a belated stage as held in the case of ***Surender Kumar Sharma Vs. Makhan Singh***, reported in ***(2009) 10 SCC 626***. Further, the plain language of Order VI Rule 17 shows amendment can be allowed at any stage as may be necessary for determining the real questions in controversy between the parties.

In the light of discussion made so far, I am of the view that the decisions cited on behalf of the respondents are not of much help to the cause of respondents and are distinguishable on facts.

17. In view of the aforesaid discussion, I think the learned trial court failed to exercise its jurisdiction properly and I am of the considered opinion that the impugned order needs modification to the extent that proposed amendment at paragraph no.3 of the petition dated 23.11.2015 which was rejected by the learned court below, needs to be allowed and hence the amendment petition of the petitioner before the learned court below is allowed in its entirety subject to



payment of cost of Rs. 50,000/-. The impugned order dated 12.02.2018 passed by learned Sub Judge-IIInd, Bhabhua in Title Suit No. 90 of 2003 stands modified to the aforesaid extent only.

18. Accordingly, the instant petition stands allowed.

19. However, it is made clear that this Court has not expressed any opinion on the merits of the case and whatever has been discussed is only for the purpose of disposal of the present petition and would not cause prejudice to any party.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	19.12.2023
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