

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.632 of 2023

Ramesh Bari @ Ramesh Kumar Bari Son of Late Bharat Bari, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.

... .. Petitioner/s

Versus

1. Dinesh Yadav Son of late Yogendra Yadav, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.
2. Ganesh Yadav Son of late Yogendra yadav, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.
3. Binod Yadav Son of late Mahendra Yadav, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.
4. Suresh Bari Son of late Bharat Bari, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.
5. Dinesh Bari Son of late Bharat Bari, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.
6. Ganesh Bari Son of late Bharat Bari, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.
7. Mahesh Bari Son of late Bharat Bari, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.
8. Malti Devi Wife of Late Bharat Bari, Resident of Ward no- 8 (old ward no-30), Lakshmi Sagar, Bari Tola, Bhauwara, Town and P.S.- Madhubani, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Nath Jha, Advocate
For the Respondent/s : Mr. Ravi Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 18-07-2024

Heard learned counsel for the petitioner as well as

learned counsel for the respondents 1st set and I intend to dispose

of the petition at the stage of admission itself.

02. The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 16.02.2023 passed by learned Munsif Ist, Madhubani in Title Suit No. 13 of 2016 whereby and whereunder some of the amendments sought by the plaintiffs for amending the plaint, have been rejected. Further prayer has been made for allowing all the proposed amendments which have been sought by the plaintiff.

03. Learned counsel for the petitioner submits that petitioner is plaintiff no. 3 and other plaintiffs have been made party as respondent 2nd party. The plaintiffs filed a Title Suit No. 13 of 2016 in the Court of learned Civil Judge,-1 Madhubani against the defendants for declaration and confirmation of possession with respect to Schedule-II land and also for recovery of possession if dispossessed during pendency of suit apart from other ancillary reliefs. After notice the defendants/respondents 1st party appeared and filed their written statement. Thereafter, the plaintiffs filed a petition under Order-6, Rule-17 of the Code of Civil Procedure (in short “the Code) on 11.01.2023 for amending the plaint. A rejoinder to this application was filed and the learned trial court *vide* impugned order dated 16.02.2023 partly allowed the proposed amendment of the plaintiff and partly

rejected the same.

04. Learned counsel for the petitioner further submits that there was no justification for the learned trial court to disallow some of the amendments when the trial was still at the stage of recording evidence after completion of pleadings and settlement of issues. Learned counsel further submits that no evidence was recorded. Learned counsel further submits that the amendments sought are formal in nature and for correcting some typographical errors. The learned trial court allowed certain amendments in paragraph 1 and 2 of the plaint while its consequential amendments in the Schedules were not allowed which gave rise to an anomalous situation. The amendment regarding deletion of plot no. of Schedule have been mentioned in paragraph 1 and 2 of the plaint and the same amendment for Schedule whereby the plaintiffs sought to delete certain plots from their scheduled property were disallowed. Learned counsel further submits that all the amendments are explanatory and clarificatory in nature and are necessary for complete adjudication of the case between the parties. The learned trial court has rejected the certain amendments only on the ground that value of suit and the nature of the land would change but the same could not be the ground for disallowing the amendments. Thus, learned counsel submits that the impugned order is vague,

cryptic, unreasonable, non-reasonable and that it is unsustainable in law as well as on facts.

05. Learned counsel appearing on behalf of the respondent 1st party vehemently opposes the submission made on behalf of the petitioner. Learned counsel for the respondent 1st party submits that while bringing the amendment, the plaintiffs sought to change the plot number but the said plot no. 7354 which the plaintiffs want to change is the *raiya* land of defendants which was purchased by their ancestors from the ancestors of the plaintiffs whereas, the Plot No. 7355 which the plaintiffs want to insert in Schedule is the land of landlord which was settled in favour of the ancestors of the defendants and land is in possession of the defendants for quite long time. The plaintiffs want to change the subject matter, the basis of the suit, and wants to introduce a new story. The plaintiffs also want to change the area of the suit land and also its boundary. Learned counsel further submits that by bringing the amendment the plaintiffs want to raise the value of the suit.

06. By way of reply, the learned counsel for the petitioner submits that even after the value of the suit increases it will remain within the jurisdiction of the learned trial court and there will be no change of jurisdiction.

07. I have given my thoughtful consideration to the

different aspects of the matter and the rival submissions of the parties. Order-6, Rule-17 of the Code reads as under:

“Amendment of Pleadings: The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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.”

The Courts shall allow the amendments at any stage if the same is necessary for adjudication of the real controversy between the parties. The suit is still at its initial stage as it is reflected from the impugned order that matter has been fixed for evidence of the plaintiffs. I am not at all convinced with the reasoning adopted by the learned trial court that allowing the amendment would result in change in the nature of the suit or the enhancement of the valuation of the suit could be the reason to refuse the amendment. Moreover, when the learned trial court allowed the amendments in paragraph 1 & 2 of the plaint bringing certain new facts in the plaint, it does not strike to senses why the same amendment could not be allowed in the Schedules. Further, increase or decrease in the value of suit is

consequential to the said amendment and if the amendment does not change the jurisdiction there is no harm in allowing the amendment in valuation of suit. The Court should be liberal in allowing the amendments if the trial has not begun and more so in the case where it is necessary for adjudication of real dispute between the parties. The law on this point has been settled by various decisions of the Hon'ble Supreme Court and recently in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders (P) Ltd.***, reported in ***2022 SCC OnLine SC 1128***, 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 negated.

(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 mala fide, 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)”

08. In the light of the aforesaid discussion, I do not think the impugned order is sustainable and hence, the same is modified to the extent that amendments proposed at Sl. No. 3, 4 & 5 of the petition dated 11.01.2023 are allowed.

09. Accordingly the present petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23.07.2024
Transmission Date	N/A