

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.193 of 2017**

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1. Vinod Kumar Barnwal S/o late Prem Shankar Jaiswal
 2. Vinita Devi
 3. Manita Devi
 4. Punita Devi
 5. Deepa Barnawal
 6. Anupama Kumari All D/o late Premshankar Jaiswal all are r/o Pashanauli old Market Maharaj Ganj, P.S. Mahrajganj, District- Siwan.

... .. Petitioner/s

Versus

1. Smt. Vijay Laxami Devi W/o Rameshwar Prasad Nirala null
2. Sanjeev Kumar Sony @ Nittu Kumar S/o Rameshwar Prasad Nirala
3. Muni Devi
4. Bebi Devi
5. Gudiya Devi
6. Sujata Devi
7. Saweta Kumari All D/o late Rameshwar Prasad Nirala
8. Raju Kumar Prasad S/o late Rameshwar Prasad Nirala all are r/o Pashanauli old Market Maharaj Ganj, P.S. Mahrajganj, District- Siwan.

... .. Respondent/s

Appearance :

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

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

Date : 24-09-2024

Heard learned counsel for the parties and I intend to dispose of the instant petition at the stage of admission itself.

2. The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated



21.09.2016 passed by learned Sub Judge-4th, Siwan in Title Suit No. 123 of 1995 whereby and whereunder the learned trial court has allowed the amendment petition.

3. Learned counsel for the petitioners submits that the impugned order has been passed by the learned trial court without considering the facts and law. The impugned order is completely non-speaking and cryptic. The learned trial court has not given any reasons for passing the impugned order. Learned counsel further submits that the impugned order is also barred by Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) as no due diligence has been shown for bringing the amendment. The amendment petition was filed when the matter was fixed for judgment and learned trial court did not consider the fact that the said petition has been filed only to delay the disposal of the case and taking back the matter to the stage of fresh trial.

4. Learned counsel further submits that the plaintiffs are the petitioners in the present case and have filed Title Suit No. 123 of 1995 for declaration of their right title in the suit property and also for declaration that defendants are trespassers and the sale deeds in their favour are forged and fabricated documents. After completion of evidence of the parties, the arguments were heard and thereafter *vide* order dated 10.06.2016



the matter was fixed for judgment. However, the defendants moved an application on 25.06.2016 that the defendants wanted to argue on some legal point and the matter was fixed for arguments. The defendants did not argue on next date and filed time petition and the matter was adjourned. Thereafter, on 13.07.2016, the defendants moved an application under Order 6 Rule 17 of the Code on which a rejoinder was filed by the plaintiffs/petitioners and after hearing the parties, the learned trial court allowed the application filed by the defendants. However, while allowing the application the learned trial court has just mentioned that the amendments are formal in nature and are necessary. Thereafter, the amendment application was allowed in the interest of justice and at the cost of Rs. 1000. Learned counsel submits that this order is completely perverse as it does not mention any reasons. Learned counsel further submits that once trial has commenced the defendants were required to show that despite due diligence they could not have brought the amendment before commencement of trial. The amendment petition has been filed after almost 21 years. Learned counsel further submits that the amendment application is completely malafide and has been sought only to linger the matter so that the defendants could further ask for comparing the signatures and thus the suit is kept pending and disposal of the suit be delayed.



The learned trial court has also not considered that allowing the amendment would mean starting a *de novo* trial. Further relevance of the amendment was not at all considered by the learned trial court. Learned counsel has relied on the decision of the Hon'ble Supreme Court in the case of **M. Revanna Vs. Anjanamma (Dead) by LRS. & Ors.** reported in **2019(4) SCC 332** wherein the Hon'ble Supreme Court held that there cannot be any dispute that an amendment cannot be claimed as a matter of right and under all circumstances, and the Court needs to take into consideration whether the application for amendment is bonafide or malafide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money and further held that allowing belated amendments would lead to travesty of justice and cause serious prejudice to the plaintiffs. Thus, learned counsel submitted that the impugned order is not sustainable and the same be set aside.

5. Learned counsel appearing on behalf of the respondents however contends that there is no infirmity in the impugned order and the learned trial court, after considering the facts of the case, came to the conclusion that the amendments were necessary for the determination of the real controversy between the parties. Learned counsel further submits that in their



written statement, defendants have taken the plea that there is no agreement between the plaintiffs and Girdhari Prasad and they never came into possession of the suit property. To clarify that point and to further assail the document which was based on a forged signature, this amendment was brought. Moreover, subsequent event about acquittal of the defendant etc. in a criminal case filed by one of the plaintiffs was also brought on record through the said amendment. Learned counsel further submits that in written statement the strict rule of amendment in plaint is not applicable. Thus, the learned counsel submits that there is also no infirmity in the impugned order.

6. Perused the record.

7. 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 ed 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 proviso makes it clear that no amendment shall be allowed after trial has commenced unless the party seeking amendment could show that despite due diligence, the matter



could not be raised earlier. Coming back to the facts of the case, the defendants have failed to show why they did not seek the amendment earlier about forged signature of Girdhari Prasad. In the similar manner the defendants have not given any time or date about subsequent event of their acquittal in criminal case. Therefore, the irresistible conclusion is that the amendments were sought without showing due diligence and it gives credence to the submission of the learned counsel for the petitioner that the amendments are malafide.

8. Thus, having regard to the facts and circumstances and submission made on behalf of the parties, I am of the considered opinion that the amendment petition of the defendants should not have been allowed. Admittedly, the amendment petition has been filed after the matter was already fixed for judgment. Once the matter is fixed for judgment, any application filed on behalf of either of the parties cannot be entertained since fixing the date for judgment means the matter has been finally heard and nothing remains to be done on part of the parties and it is only a matter of convenience for the Court to fix the date for judgment as the Court could not pronounce the judgment when the arguments ended. So it was a stage where no application could be entertained. In this regard, reliance may be placed on the decision of the Hon'ble Supreme Court in the case of *Arjun*



Singh Vs. Mohindra Kumar & Ors., reported in ***AIR 1963 SC 993***, wherein the Hon'ble Apex Court held that where the hearing is completed, the parties have no further rights of privileges in the matter and it is only for the convenience of the Court that Order XX, Rule 1 of the Code permits judgment to be delivered after an interval after the hearing is completed but the same does not confer any right on any of the parties to file further petition and the Court has got no jurisdiction to pass any order on such petition.

9. Furthermore, the defendants have utterly failed to show that despite due diligence they could not have raised the matter earlier in time. Hence, such amendment will be hit by proviso to Order 6 Rule 17 of the Code. Hon'ble Supreme Court in the case of ***Basavaraj v. Indira & Ors.*** reported in ***(2024) 3 SCC 705*** has held that the Court should not allow the amendments at belated stages if due diligence has not been shown. In the case of ***Basavaraj (supra)*** the Hon'ble Supreme Court quoted the case of ***M. Revanna (supra)*** and held that Order 6 Rule 17 of the Code prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The Hon'ble Supreme Court further held that the burden is on the party seeking amendment after commencement



of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. The Hon’ble Supreme Court further held that though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bonafide or malafide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.

10. Therefore, in the light of discussion made hereinbefore, I am of the opinion that the impugned order dated 21.09.2016 is not sustainable and hence, the same is set aside.

11. As a result the present petition is allowed and the learned trial court is directed to proceed in the matter and dispose of the same within a month from the date of receipt/production of copy of this order since the matter has been pending since 1995 and the matter has already been fixed for judgment prior to allowing the amendment.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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