

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.793 of 2023

Ram Nath Ray Son of Late Lal Mohar Ray, resident of Village Batrauli, P.O. Semri, P.S. Bainyapur Now Sahajitpur District Saran at Chapra.

... .. Petitioner/s

Versus

1. Harendra Kumar Ray Son of Prabhu Nath Ray, Resident of Village - Batrauli, P.O. Semri, P.S. Baniyapur Now Sahajitpur, District Saran at Chapra.
2. Arun Kumar Ray, Son of Prabhu Nath Ray, Resident of Village - Batrauli, P.O. Semri, P.S. Baniyapur Now Sahajitpur, District Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Sharma, Advocate
For the Respondent/s	:	Mr. Raushan, Advocate
		Mr. Sahil Kumar, Advocate
		Mrs. Suman Hansaria, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 23-07-2024

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

02. The instant petition has been filed under Article 227 of the Constitution of India for quashing the order dated 10.05.2023 passed by the learned Sub Judge-3rd Saran, Chapra in Title Suit No. 556 of 2014 whereby and whereunder the amendment petition filed by the petitioner dated 23.08.2022 was rejected by the learned Sub Judge.

03. Learned counsel for the petitioner submits that the petitioner is plaintiff before the learned trial court and has filed Title Suit No. 556 of 2014 for declaration that the gift deed

dated 05.08.2014 executed by Mostt. Kawalpati Kuwar in favour of the defendants, the respondents herein, are forged and fabricated document and the same be declared illegal, void, ineffective and not binding upon the plaintiff and the said sale gift deed be cancelled. The learned counsel further submits that father of the plaintiff Lal Mohar Ray died in year 2001 leaving behind his widow Mostt. Kawalpati Kuwar, three sons including the petitioner/plaintiff and three daughters. The mother of the plaintiff Kawalpati Kuwar died on 06.08.2014 at the age of 95 years and she was not physically and mentally fit to execute the gift deed. The ancestors of the plaintiff left behind Schedule-1 land and the plaintiff and other legal heirs are coming into peaceful possession of their ancestral land. During pendency of the suit, the plaintiff/petitioner filed the application under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter 'the Code') seeking certain amendments in the plaint. The first amendment was adding the name of Lal Mohar Ray after the word '*Moris*'. This amendment was sought in paragraph-1 of the plaint. Second amendment was sought in paragraph-13 for addition of following facts:

“Lal Mohar Ray and his wife died leaving behind their three sons in jointness. Till date Lal Mohar Ray was alive,

he was the *karta* and master of the family. Lal Mohar Ray and his sons used to do business of cattle and milk. Out of this income and selling sum was kept by Lal Mohar Ray. From this income, the property was purchased in the names of different members of the family and such properties are joint family properties. Legally, the joint family property cannot be gifted.”

The learned counsel further submits that these amendments are formal in nature and do not change the nature of the suit. Further, the learned trial court though allowed the first amendment for adding the name of Lal Mohar Ray after the word ‘Moris’ in 1st paragraph, the learned trial court rejected the second amendment in paragraph 13. The learned counsel further submits that under the provisions of Order 6 Rule 17 of the Code, 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. The learned counsel further submits that the prayer for amendment is to be allowed if the amendment is required for effective and proper adjudication of controversy between the parties and also to avoid multiplicity of proceedings. In this regard, learned counsel relied on the decision of Hon’ble Supreme Court in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders (P)***

Ltd., reported in **2022 SCC OnLine SC 1128**. Learned counsel further submits that the amendment disallowed by the learned trial court is merely clarificatory and the fact of property being joint and the same being gifted have already been mentioned in the plaint. Thus, the learned counsel submits that the impugned order is not sustainable so far as it disallowed the second part of the amendment.

04. The learned counsel appearing on behalf of the respondents vehemently counters the argument made on behalf of the petitioner. Learned counsel for the respondents submits that the learned trial court has rightly rejected the amendment. The petitioner filed the amendment petition during the recording of evidence of the defendants/respondents and they have been examined and cross examined. Therefore, the amendment has been brought after the commencement of trial and the same cannot be allowed as there is specific bar in Order 6 Rule 17 for the amendments brought after commencement of trial. Learned counsel further submits that moreover, there has been no reason given for bringing the amendment at the stage of recording of evidence of the defendants and it seems the petitioner has sought the amendment with ulterior motive after the evidence of the plaintiff was closed and even the evidence of the defendants

has been recorded. The learned counsel further submits that the petitioner wants to introduce entirely new facts to fill up lacuna in his case and also wants to plead law point which could not be permitted. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same be sustained.

05. I have given my thoughtful consideration to the rival submissions of the parties, in the light of the facts and circumstances of the case. Normally, the courts are liberal in allowing amendments but every amendment could not be allowed as it could be done within certain defined parameters. Admittedly, the amendment petition has been filed during the recording of evidence of the defendants and it appears that defendants have already been examined. So the amendment is hit by proviso to Order-6, Rule-17 of the Code. There is no explanation as to why the facts sought to be brought through amendment at the stage could not have been pleaded earlier. The fact has always been in the knowledge of the plaintiff/petitioner. The amendment has been filed only after commencement of trial and when the trial is about to be concluded. Further, I find that the plaintiff/petitioner has failed to show the relevance of the amendment for effective and proper adjudication of the controversy or for determining the real question in controversy

since the plaintiff/petitioner has already taken the plea of suit property being joint and specific prayer being made for declaring the gift deed void. Further, mentioning of the legal position or law point in pleading is not necessary.

06. Therefore, having regard to the bar created by proviso to Order 6 Rule 17 of the Code and further considering lack of due diligence and irrelevance of the subject matter of amendment for deciding the real controversy between the parties, the second part of amendment sought by the plaintiff/petitioner could not be allowed.

07. In the light of discussion made hereinbefore, I do not find any infirmity in the impugned order and the same is sustained.

08. As a result, the petitioner stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
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