

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.683 of 2022

1. Rajendra Ray Son of Late Baleshwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
2. Harendra Ray, Son of Late Baleshwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
3. Lalan Ray, Son of Late Baleshwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.

... .. Petitioner/s

Versus

1. Bulkan Ray Son of Late Dangar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
2. Ram Kumar Ray, Son of Late Dangar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
3. Pramod Ray, Son of Late Chandradeep Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
4. Bhuneshwar Ray, Son of Late Chandradeep Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
5. Ram Dular Ray, Son of Late Chandradeep Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
6. Amod Ray, Son of Late Chandee Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
7. Chuman Ray @ Ram Pukar Ray, Son of Late Keshwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
8. Jogi Ray, Son of Late Keshwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
9. Jagbandhu Ray, Son of Late Keshwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
10. Shankar Ray, Son of Late Vijay Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
11. Ram Nath Ray, Son of Late Vijay Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
12. Kamal Ray, Son of Late Ram Ishwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
13. Shiv Prasad Ray, Son of Late Ram Ishwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
14. Rajesh Kanna Ray, Son of Late Ram Ishwar Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.
15. Arbind Rai, Son of Rebat Ray Resident of Village- Dayalpur, P.O.- Dayalpur, P.S.- Rajapakar, District- Vaishali.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Choudhary, Advocate
For the Respondent/s : Mr. Surendra Kishore Thakur, Advocate
Mr. Subodh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 27-11-2024

Heard learned counsel for the petitioners and learned counsel for the respondent no.13 on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

02. The petitioners are aggrieved by the order dated 18.08.2022 passed by the learned Munsif-II, Vaishali at Hajipur in Title Suit No. 36 of 2016, whereby and whereunder the application filed by the plaintiffs/petitioners under Order 6 Rule 17 r/w Section 151 of the Code of Civil Procedure (for short 'the Code') seeking amendment in their plaint has been rejected by the learned trial court.

03. Learned counsel for the petitioners submits that the petitioners filed the Title Suit No. 36 of 2016 seeking declaration of their right, title and interest with regard to the suit property. The defendant-3rd party/respondent 3rd party appeared and filed their written statement denying the averments made by the plaintiffs/petitioners. After issues were settled, the evidence of the plaintiffs started and eight witnesses on behalf of the plaintiffs had been examined. Meanwhile, the



plaintiffs/petitioners, on 25.11.2019, filed amendment petition under Order-VI Rule-17 r/w Section 151 of the Code seeking certain amendments in the plaint. A rejoinder was also filed on behalf of the defendant-3rd party/respondent no. 13 and the learned Munsif-II, Vaishali at Hajipur heard the matter and rejected the amendment petition vide order dated 18.08.2022, which is under challenge in the present civil miscellaneous petition. Learned counsel further submits that the learned trial court went by strict interpretation of law and did not take a liberal view though the proposed amendments are formal in nature and would not have changed the nature of the suit and are not malafide. Learned counsel further submits that the amendment sought was necessary for determination of real controversy between the parties. Learned counsel further submits that the alias name of grandfather of the plaintiffs/petitioners as 'Rajdeo Ray' could not be mentioned in the plaint and only his real name 'Neman Ray' has been mentioned, serious prejudice would be caused to the plaintiffs/petitioners since *Khatiyani* was prepared in the name of Rajdeo Ray. This fact was sought to be brought on record by mentioning that Rajdeo Ray and Neman Ray were the names of same person. Learned counsel clearly concedes that the



amendment has been sought after commencement of trial and after eight witnesses had been examined in the case. Learned counsel further submits that the said amendment is necessary for the purpose of proper adjudication of the matter.

04. Learned counsel appearing on behalf of the respondent no. 13 vehemently contends that there is no infirmity in the impugned order and the same does not need any interference by this Court. Learned counsel submits that the learned trial court has mentioned the fact that the option of amendment should be availed before commencement of the trial and exception is reasonable excuse.. The amendment was sought when the plaintiff has examined himself as well as seven other witnesses in support of his case. No satisfactory explanation and due diligence has been shown for bringing the amendment at such belated stage. The petitioners have sought the amendment, which would change the entire story of the plaintiffs as the plaintiffs want to add the name 'Rajdeo Ray' as alias name of Neman Ray but the said person Rajdeo Ray was not from the family of the plaintiffs and he was son of Makhan Ray and his son is Lalu Ray and these persons have no concern with the family of the plaintiffs/petitioners. Even none of the witnesses have deposed about this fact that Rajdeo Ray is



another name of Neman Ray. Learned counsel further submits that the plaintiffs are trying to fill up the lacunae in their case. Moreover, there is no jurisdictional error in the order impugned and this Court cannot interfere in such orders in casual manner as the supervisory jurisdiction under Article 227 of the Constitution of India is to be exercised with circumspection. If the plaintiffs/petitioners were not vigilant and brought the amendment too late, the impugned order could not be faulted for rejecting such amendment and there is no scope for interference by this Court.

05. I have considered the rival submission of the parties and perused the record. Order VI Rule 17 of the Code reads as under:-

“17. 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.”

06. Evidently, the amendment after commencement of trial could be allowed in exceptional circumstances and when due diligence was shown by the parties for not bringing the amendment at the preliminary stage of the trial. If the plaintiffs/petitioners claim the alias name of their grandfather could not be mentioned, this fact about alias name was within the knowledge of the plaintiffs/petitioners from the very beginning of the suit and the impugned order has taken this fact into consideration and could not be faulted on this account. The plaintiffs/petitioners utterly failed to show any due diligence or any reasonable excuse for bringing amendment at such belated stage when the evidence of eight witnesses of the plaintiffs has been recorded and allowing the amendment at this stage would result in turning the clock back.

07. However, considering the fact that the proper adjudication of the suit is required in order to finally determine the real controversy between the parties, considering the long gap as well as the nature of amendments, the amendments could be allowed subject to imposition of exemplary cost. Hence, the impugned order dated 18.08.2022 passed by the learned Munsif-



II, Vaishali at Hajipur in Title Suit No. 36 of 2016 is set aside and the application dated 25.11.2019 filed for amendment before the learned trial court is allowed subject to payment of cost of Rs. 1,00,000/- (one lac) to be paid to the contesting defendant/respondent by the petitioners on the first date of hearing before the learned trial court after receipt/production of a copy of this order. The other side will be given ample opportunity to rebut/controvert the claim of the petitioners/plaintiffs sought to be brought through amendment by way of filing amended/additional written statement, if so advised.

08. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

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

