

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.692 of 2016

Thakur Prasad, Son of Late Haliwat Pandey, Resident of Mouja Mudla, P.O. Mudla, P.S. Ramgarhwa, District East Champaran, at Present Saving Club Road, Bhawanipur Zirat, Motihari

... .. Petitioner/s

Versus

1. Upendra Nath Verma, Son of Late Haliwat Pandey Resident of Village and P.O. Mudla, P.S. Ramgarhwa, District East Champaran
2. Jitendra Nath Verma, Retired Assistant Director, Postal Department Son of Late Haliwat Pandey Resident of Village and P.O. Mudla, P.S. Ramgarhwa, District East Champaran
3. Satyendra Kumar Son of Late Most. Nand Kishori Devi, Widow of Late Vidya Nand Prasad Resident of Vidya Sadan 195, Abhiyanta Nagar, West Baily Road, Danapur, Patna
4. Shailendra Kumar Verma Son of Late Most. Nand Kishori Devi, and Vidya Nand Prasad resident of Supriya Chhawni Mian Road, At and P.S. Bettiah, District West Champaran
5. Mridula Verma Wife of Suresh Sharan Verma resident of Raj Palace Campus, At and P.S. Bettiah, District West Champaran
6. Most. Nilam Verma wife of Anirudh Prasad resident of Shantibagh, Pandey Tola, Ward No. 22, At P.O. Narkatiyaganj, District West Champaran
7. Renu Sinha Wife of Diwakar Prasad Sinha resident of Vishwanathpur Dumra, P.O. Vishwanathpur Dumra District Sitamarhi
8. Suman Srivastava Wife of Rajendra Kumar Srivastava resident of House No. 166,7 Rinbows, Prabhu Prempuram , East Block, Near Gargi Gas Godown, At and P.O. Ambala Cant. Haryana
9. Rashmi Kumari Wife of Chandra Kishore Prasad Resident of Custom Quarters, Near Hotel Lake View, At and P.O. Motihari, District East Champaran
10. Vaidehi Sinha Wife oif Vijay Kumar Sinha Resident of Radha Bhavan, Christian Quarters, West of Sant High School, At and P.S. and P.O. Bettiah, District West Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Lala Sachindra Kumar, Advocate Mr. Ashok Kumar Sinha No.2, Advocate
For the Respondent 1	:	Mr. Samir Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 19-09-2024

Heard learned counsel for the petitioner and learned



counsel for the respondent no.1 and I intend to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 20.05.2016 passed by learned Sub Judge- 8, Motihari in Partition Suit No. 214 of 2005 whereby and whereunder the learned trial court rejected the petition filed by the petitioner under Order 6 Rule 17 of the Civil Procedure Code (hereinafter referred to as the 'Code').

3. The learned counsel for the petitioner submits that the petitioner is defendant no.1 whereas respondent no.1 is plaintiff before the learned trial court and other respondents are also defendants. The plaintiff/respondent no.1 filed Partition Suit No. 214 of 2005 before the learned Sub Judge, Motihari seeking partition of joint family property claiming 1/4th share in the Schedule III property and 3/10th share in Schedule II property. The defendant no.1/petitioner filed written statement and contested the suit. The defendant/respondent no.2 also filed a separate written statement. The original defendant no.3 died leaving behind the heirs, who are respondent nos. 3 to 10. The defendant/respondent no. 4 Shailendra Kumar filed a separate written statement. The learned counsel further submits that



during the pendency of the said partition suit, the petitioner filed an application on 24.11.2015 under Order 6 Rule 17 of the Code making prayer for incorporating certain amendments in the written statement. Rejoinders were filed and the learned trial court, after hearing the parties, rejected the amendment petition vide order dated 20.05.2016.

4. The learned counsel for the petitioner further submits that the impugned order is not sustainable as the learned trial court arbitrarily rejected the proposed amendments in the written statement on the ground that the amendments have been filed after much delay. The learned counsel further submits that the amendments are not going to change the nature of suit and the court should be liberal in allowing the amendments. The learned counsel further submits that the Hon'ble Supreme Court in the cases of ***Ragu Thilak D. John v. S. Rayappan***, reported in ***AIR 2001 SC 699*** and ***B.K. Narayana Pillai v. Parameswaran Pillai***, reported in ***AIR 2000 SC 614*** held that if the other sides could be compensated in terms of cost, the amendments should be allowed even after delay. The learned counsel further submits that the plaintiff/respondent no.1 has not included other joint family property standing in his name or in the name of respondent no.2 or in the name of their sons. The



plaintiff/respondent no.1 has not even made the son as a party in the suit. The self acquired property of the son of the defendant no.1/ petitioner has been included in the suit property in the plaint. But the son of the petitioner has not been made party. Thus, learned counsel submits that the impugned order needs to be set aside and the amendment petition is required to be allowed.

5. On the other hand, learned counsel for the respondent no.1 vehemently opposes the submission made on behalf of the petitioner. The learned counsel further submits that there is no infirmity in the impugned order. The amendment petition has been filed after 11 years of filing of the written statement and in the meantime, twice amendments were allowed by the court both in the plaint and the written statement and even then the petitioner did not bring about that amendment at the first instance. The learned counsel further submits that the petitioner wants to bring amendments by adding the property which are not the suit properties and prayed for treating his claim as counter claim which could not be allowed. The learned counsel further submits that while seeking amendment at serial numbers 1, 3 and 4 in the amendment petition, the petitioner wants to make claim against the property of respondent nos. 1, 2



& 3 which are not the part of the suit property. The learned counsel further submits that through the amendment petition, the petitioner wants to make amendment even in the plaint against the provisions of law. Thus, the learned counsel submits that the instant petition has got no merit and the same may be dismissed.

5. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case.

6. From perusal of impugned order, I find that the amendment petition has not been rejected merely on the ground of delay. The learned trial court has discussed the amendments sought to be brought on record on behalf of the petitioner and rejected the same with a reasoned order. So far as the amendment at serial numbers 1, 3 and 4 are concerned, the petitioner has put his counter claim mentioning about various properties which are ancestral or purchased with the joint family fund and gave details of such properties and sought relief of his 1/3 share in the properties mentioned in Schedule I of the written statement after amendment. The defendant also denies the claim of defendant no. 3 in the property so mentioned through proposed amendment at serial numbers 1 & 3. It is



settled proposition of law that the petitioner is required to make counter claim under Order 8 Rule 6A of the Code satisfying the rules relating to filing of plaint and before written statement could be treated as a counter claim, it needs to satisfy the rule prescribed in this regard. Further counter claim can be set up only against the claim. If the plaintiff has not mentioned about the properties as claimed by the defendant/petitioner, the defendant/petitioner cannot insist for acceptance of his schedule for partition. The counter claim cannot be made beyond the claim of the plaintiff. The defendant/petitioner has also sought adjudication of his dispute with defendant no. 3, but *inter se* dispute of the defendants could not be settled in such manner in a partition suit. Though the courts are not supposed to look into the merits of the proposed amendments, still only those amendments could be allowed which are necessary for determination of real controversy between the parties in terms of Order 6 Rule 17 of the Code. Therefore, the amendments at serial numbers 1, 3 and 4, which have no relevance to the controversy in hand, could not be permitted. The other two amendments at serial numbers 2 and 5 sought by the defendant/petitioner pertains to the plaint of the plaintiffs. Under Order 6 Rule 17 of the Code, a party can make prayer for



amendment in his pleading and such party cannot seek amendment of pleading of other side by making application under Order 6 Rule 17 of the Code. Such prayer is beyond the purview of Order 6 Rule 17 of the Code.

7. Therefore, I am of the considered opinion that the learned trial court has rightly rejected the amendment application of the defendant/petitioner and there is no infirmity in the order dated 20.05.2016 and hence, the same is affirmed.

8. As a result, the instant petition stands dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.09.2024
Transmission Date	NA

