

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.530 of 2021**

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1. Jai Nandan Paswan Son of Late Ram Narayan Dusadh @ Ram Narayan Ram Resident of Village- Chauri, P.O.- Chauri, P.S.- Daudnagar, District- Aurangabad.
2. Surendra Paswan Son of Late Ram Narayan Dusadh Resident of Village- Chauri, P.O.- Chauri, P.S.- Daudnagar, District- Aurangabad.
3. Birendra Paswan Son of Late Ram Narayan Dusadh Resident of Village- Chauri, P.O.- Chauri, P.S.- Daudnagar, District- Aurangabad.

... .. Petitioner/s

Versus

1. Inderjeet Bahelia Son of Late Nanhak Bahelia Resident of Village- Chauri, P.O.- Chauri, P.S.- Daudnagar, District- Aurangabad.
2. Ranjeet Bahelia Son of Late Nanhak Bahelia Resident of Village- Chauri, P.O.- Chauri, P.S.- Daudnagar, District- Aurangabad.
3. Ramesh Kumar S/o Late Sarda Nand Bahelia now S/o Inderjeet Bahelia Resident of Village- Chauri, P.O.- Chauri, P.S.- Daudnagar, District- Aurangabad.
4. Dulari Devi W/o Late Sarda Nand Bahelia now W/o Inderjeet Bahelia Resident of Village- Chauri, P.O.- Chauri, P.S.- Daudnagar, District- Aurangabad.
5. Narndra Paswan S/o Late Ram Narayan Dusadh Resident of Village- Chauria, P.O.- Chauria, P.S.- Daudnagar, District- Aurangabad.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Binod Jee Verma, Advocate<br>Mr. Sudhir Kumar, Advocate |
| For the Respondent/s | : | Mr. Shams Alam, Advocate                                    |

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

**Date : 17-10-2024**

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

2. The petitioners are aggrieved by the order dated  
18.03.2021 passed by the learned Sub Judge-III, Aurangabad in  
Title Suit No. 152 of 2011 whereby and whereunder the petition



filed under Order VI Rule 17 and 18 read with Section 151 of the Code of Civil Procedure (in short “the Code”) for amendment in the plaint has been allowed.

3. Learned counsel for the petitioner submits that petitioners are defendants and the respondent 1<sup>st</sup> set are the plaintiffs in Title Suit No. 152 of 2011. The evidence of both sides have been recorded and the matter was running at the stage of final hearing, an amendment petition has been filed on 08.03.2021 on behalf of the plaintiffs bringing entirely new facts on record. The facts were all along been in the knowledge of the plaintiffs. But without any explanation or without showing any due diligence as to why these facts could not have been brought earlier on the record, the prayer for amendment was made and the same was allowed. Learned counsel further submits that no amendment could be allowed after commencement of the trial and the amendment which introduces entirely new facts should never have been allowed. Learned counsel further submits that in the amendment petition of the plaintiffs it has only been mentioned that the amendment petition was being filed at the instance of newly appointed counsel of the plaintiffs as due to mistake some facts have been wrongly mentioned and some facts have been left to be mentioned. But this could not be a



ground for allowing amendment. The plaintiffs have also sought to bring on record the fact about settlement of the suit land in favour of the defendants/petitioner way back in 1938 challenging it to be bogus, forged and fabricated and further challenging the right and title of the settlor to settle the suit land in favour of the settlees. Learned counsel further submits that the plaintiff wants to bring entirely new facts related to ex-landlord and wants to introduce a person as landlord claiming her to be auction purchaser instead of recorded tenant. Such amendment would change the nature of the suit. Learned counsel further submits that that the learned trial court have not considered these facts and also failed to appreciate that the amendment could seriously prejudice the defendants/petitioner as they would be required to rebut/controvert the said amendment by filing additional written statement and a fresh trial would start in the case whereas the arguments were being heard and the matter could have been disposed of.

4. Learned counsel further submits that even the conduct of the learned trial court is not above board as after filing of the amendment petition on 08.03.2021 the next date fixed was 15.03.2021 for filing rejoinder and for arguments but it appears from the order sheet that on 15.03.2021 the matter



was not taken up and no orders were passed. However, an order dated 15.03.2021/23.03.2021 is on record which shows the office put the record on the said date and both sides filed their *hajiri* and the matter was fixed for 05.04.2021 for filing rejoinder and argument. In the meantime, on 18.03.2021 the impugned order has been passed which is beyond comprehension. Learned counsel further submits that since the impugned order is against the specific provisions of law, the same is not sustainable and needs to be set aside.

5. Learned counsel appearing on behalf of the respondents 1<sup>st</sup> set submits that there is no infirmity in the impugned order and the same does not need any interference. The amendments sought are formal in nature and have been made to avoid multiplicity of litigation. One of the auction purchasers along with the plaintiff was sought to be brought on record through amendment in place of the recorded tenant. The plaintiffs purchased the land through a registered sale deed dated 20.12.1961 from the person to whom the auction purchaser allotted the suit land. Learned counsel further submits that the amendment in the plaint is necessary for proper adjudication of the matter and deciding the real controversy between the parties.



6. I have considered the rival submission and also perused the record. Admittedly, the amendments have been sought at the stage when the evidence of both sides has ended and the matter was at the stage of arguments. 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 proviso makes it clear that no amendment shall be allowed after trial has commenced unless the party seeking amendment could show despite due diligence, the amendments could not be sought earlier. Apparently, there is no reason either in the application filed for amendment before the learned trial court or even in the counter affidavit where only general and platitudinous terms have been used to justify the amendments. The learned trial court has not recorded any finding on this aspect of the matter in the impugned order.

7. It further appears from the amendment petition that new facts are being introduced as the plaintiffs earlier claimed



their title through a person stated to be the son of the recorded tenant whereas subsequently, the plaintiffs wants to replace the status of that person from son of the recorded tenants to settlee of the auction purchaser. Hon'ble Supreme Court in the case of ***Basavaraj v. Indira & Ors.*** reported in **(2024) 3 SCC 705** has deprecated introduction of amendments at the belated stage if due diligence has not been shown and new facts are sought to be introduced, while laying down guidelines to be adhered to while considering and dealing with amendments in pleadings. Again the impugned order is silent even on this aspect of matter. Then the impugned order is conspicuous by the absence of reasons. Merely saying that the amendments are not going to change the nature of the suit or it is necessary for the purpose of avoiding further litigation and to sub-serve the ultimate cause of justice, would not suffice.

8. Further, I find that the impugned order has been passed on a date when it appears from the record that some later date was fixed for hearing and for passing orders. Considering the discrepancies in passing the orders as reflected from the order sheet, the same makes the impugned order susceptible to interference by this Court.

9. In the light of the discussion made hereinbefore, I



do not think the impugned order dated 18.03.2021 could be sustained and hence, the same is set aside with direction to the learned trial court to pass an order afresh since it is a cryptic order that has been passed on a date when the matter was not even fixed for hearing or orders.

10. The learned trial court is directed to pass orders afresh within a month of receipt/production of copy of this order.

11. With the aforesaid direction, the present petition is disposed of.

**(Arun Kumar Jha, J)**

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| AFR/NAFR          | NAFR       |
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