

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1206 of 2017**

Manoj Kumar Singh @ Pankaj S/o Late Ramanand Singh resident of village -
Baghakhar, P.S. - Khaira, District - Jamui, presently residing at village -
Mahisauri, P.S. Jamui, District Jamui.

... .. Petitioner/s

Versus

1. Mukul Kumar Singh S/o late Ramanand Singh
2. Ravi Kumar Singh S/o late Ramanand Singh Both residents of village -
Baghakhar, P.S. Khaira, District Jamui presently residing at village Mahisauri,
P.S. Jamui, District Jamui.
3. Neeraja Devi @ Putul Devi D/o - late Ramanand Singh, W/o Shiv Shankar
Singh resident at village - Mahisauri, P.S. - Jamui, District - Jamui.
4. Nutan Devi D/o late Ramanand Singh, W/o Sunil Kumar Singh resident of
village - Khadui Bariyarpur, P.S. - Khaira, District - Jamui.
5. Mamta Devi D/o late Ramanand Singh, W/o Om Prakash Singh resident at
village - Sono Bazar, P.S. - Sono, District - Jamui.
6. Puja Devi @ Guriya Devi D/o late Ramanand Singh, W/o Niwash Singh
resident at village - Mahisauri, P.S. - Jamui, District - Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Singh, Advocate Mr. Pankaj Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Amit Kumar Singh, Advocate Mr. Upendra Yadav, Advocate

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

Date : 05-12-2024

Heard learned counsel for the parties.

2. The petitioner is aggrieved by the order dated 01.04.2017 passed by learned Sub Judge-I, Jamui in Title Suit No. 27 of 2010 whereby and whereunder the petition filed by plaintiffs/respondent 1st set under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) has been allowed for making certain amendments in the plaint.



3. Learned counsel for the petitioner submits that plaintiffs/respondent 1st set filed a Title Suit No. 27 of 2010 in the court of learned Sub Judge-I, Jamui seeking a preliminary decree to the extent of one third share in the joint family property as described in the plaint. The petitioner defendant appeared and filed his written statement contesting the suit. On the basis of rival claim of the parties issues were framed and evidence was adduced by the plaintiffs by examining four witnesses. At this stage, the plaintiffs filed an application on 23.11.2016 under Order 6 Rule 17 of the Code for making amendment in Schedule 'K' of the suit land by adding 9 decimal land describing the same as the land acquired by Lalita Devi, from her father and brothers which consisted of land and house. A rejoinder was filed by the petitioner but the said amendment was allowed by the learned trial court which has been challenged before this Court.

4. Learned counsel for the petitioner submits that the aforesaid amendment has been allowed at a very belated stage as trial has already commenced and four witnesses on behalf of the plaintiffs have been examined. Furthermore, while allowing the amendment application, the learned trial court stated that the amendment was being allowed in terms of orders passed by this



Court in C.W.J.C. No 16876 of 2010 dated 20.07.2015 but the said order did not give any such liberty to the plaintiffs for bringing the amendment. The plaintiff, Ravi Kumar Singh, sought impleadment in Title Suit No. 26 of 2000 which was rejected and when he approached this Court by filing C.W.J.C. No. 16876 of 2010, the writ petition was dismissed. However, the learned Single Judge observed that the dismissal would not come in the way of petitioner asserting his right independently thereof in accordance with law. It nowhere says that the petitioner could move amendment in plaint of Title Suit No. 27 of 2010. Still, the learned trial court allowed the amendment application mentioning this fact. Learned counsel further submits that the learned trial court got swayed by observation made by this Court in C.W.J.C. No. 16876 of 2010 by which it misconstrued the import of observation made in that writ application. Learned counsel further submits that the learned trial court failed to appreciate that the way plaintiffs have been asserting their rights in respect to 9 decimal of land acquired by their mother is nothing but declaration of their title as there is no document suggesting that the said land belongs to the mother of the parties. Adding the said land of 9 decimal with the suit land of the present partition suit would virtually amount to



declaration of title of the plaintiffs and defendants over the suit land which would be prejudicial to the rights of the maternal uncle of the petitioner who claims right and title over the said land on which the petitioner has perfected his rights by way of adverse possession. Therefore, the said land could not have been made a part of the suit land. Learned counsel refers to the compromise entered into in Title Suit No. 55 of 1984 whereby and whereunder the mother of the petitioner has been given 14 decimal land of Khata No. 100, Khesra No. 317 of Mauza Masaurhi, Thana Jamui, District Munger to support his contention that this was the only joint family property existing in the name of mother of the parties. There is no other document from where it could be inferred that 9 decimal land ever came into the title and possession of the mother of the parties. Learned counsel reiterates that the plaintiffs/respondent 1st set wants to include such property which does not belong to joint property by seeking amendment which would virtually amount to declaration of title and thus changing the very nature of the suit. Thus, learned counsel submits that the impugned order is not sustainable and the same needs to be set aside.

5. Learned counsel appearing on behalf of the plaintiff/respondent no. 1 vehemently opposes the submission



made on behalf of the petitioner. Learned counsel for the respondent no. 1 submits that the petitioner was defendant in Title Suit No. 26 of 2000 wherein he filed a written statement and also his examination in chief wherein specific averment has been made about the mother of the parties having title and possession over 23 decimal land which was also mutated in her name. Learned counsel further submits that the learned trial court while passing the impugned order has taken into consideration all these facts of Title Suit No. 26 of 2000 as well as C.W.J.C. No. 16876 of 2010. Now, Title Suit No. 26 of 2000 has been dismissed for default. The said suit was filed with regard to claim of the plaintiff over 9 decimal of suit land against the present petitioner as defendant. Learned counsel further submits that in the background of the facts and circumstances, the amendment was necessary for adjudication of the controversy between the parties and the learned trial court has rightly allowed the same.

6. I have given my thoughtful consideration to the rival submission of the parties as well as the facts placed on record.

7. 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 pleading



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 bars belated amendments which are sought to be incorporated after commencement of trial. However, a discretion has been given to the Court to allow the amendments even after commencement of trial. The 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***, has summarized the law on the point of amendment in paragraph 70 in the following manner:

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) 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. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the



CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is mala fide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time



barred cause of action, the amendment is liable to be allowed even after expiry of limitation. (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)”

So, the Court can allow amendment even after



commencement of trial if the same is necessary for determination of real controversy between the parties.

8. In the present case, the suit has been filed for partition of joint family property and it appears the property has been existing in the name of mother of the parties. Thereafter, the plaintiffs sought further addition of 9 decimal of land and the said land coming into the joint stock has been explained by the defendant of the Title Suit No. 26 of 2000 who is the present petitioner. The present petitioner cannot resile from the statement made on oath and he is stopped from taking different stand. He cannot blow hot and cold at the same time. Either the property belongs to the mother as claimed by the petitioner in his examination in chief or it is the property of the maternal uncle of the petitioner as claimed by the plaintiff of Title Suit No. 26 of 2000. If the petitioner puts a defense claiming the property to be the property of his mother, subsequently, he cannot take a different stand in another title suit which has been brought by his brothers and claim averment made earlier is not binding and cannot be used against his interest in the suit for partition filed by his brothers. On this ground, the amendment petition allowed by the learned trial court could not be faulted. The learned trial court while allowing the amendment



application has also granted liberty to the petitioner for filing additional written statement in the light of amendment. Since, the amendment appears to be necessary for adjudication of the dispute between the parties and to avoid further litigation, allowing it even at a belated stage could be condoned, subject to the petitioner being compensated suitably as the matter has proceeded to the stage of plaintiff's evidence and some of the witnesses have been examined.

9. So far as contention of learned counsel for the petitioner about the learned trial court relying solely on the petition of learned Single Judge in C.W.J.C. No. 16876 of 2010, I do not think the said contention is entirely true. Learned trial court, though, has talked about the said observation, still it has also discussed the other facts of the case before allowing the amendment and the amendment had not been allowed on the said ground. With regard to the property sought to be added not belonging to the joint family stock, it is trite to remind that the parties will always be required to prove the jointness or title of a property if a contesting claim about the property is being made.

10. In the light of the discussion made hereinbefore, I am of the view that there is no infirmity in the impugned order dated 01.04.2017 and hence, the same is affirmed subject to



payment of cost of Rs.5000/- to the petitioner by the contesting respondent on the first date before the learned trial court after receipt/production of a copy of this judgment.

11. As a result, the present petition is dismissed with aforesaid modification in the order.

12. It goes without saying that since the matter has been pending before the Court, the petitioner can avail the liberty already granted by the learned trial court regarding filing of additional written statement. Anything said or observed here will not cause prejudice to the either side.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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