

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1165 of 2023

Gyanti Devi Wife of Sri Ramdil Singh Resident of Village- Bahadurpur, P.O.-
Makhdumabad, PS-Parasi, District- Arwal.

... .. Petitioner

Versus

1. Udai Yadav Son of Late Dhaneshwar Yadav Resident of Village-
Bahadurpur, P.O.- Makhdumabad, PS- Parasi, District- Arwal.
2. Ranjay Kumar Son of Late Dhaneshwar Yadav Resident of Village-
Bahadurpur, P.O.- Makhdumabad, PS- Parasi, District- Arwal.
3. Krishnanand Mishra Son of Late Bishwanath Mishra, Resident of village-
Dilia, P.O and PS- Chauri, District- Bhojpur.
4. Bachspati Mishra Son of Late Bishwanath Mishra, Resident of village-
Dilia, P.O and PS- Chauri, District- Bhojpur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Bikash Kumar Sharma, Advocate Ms. Madhuri Kumari, Advocate
For the Respondent/s	:	Mr. Ajay Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date :13-09-2024

The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 26.09.2023 passed by the learned Additional District Judge-II, Jehanabad in Title Appeal No. 58 2016, whereby and whereunder the petition dated 18.01.2023 filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short ‘the Code’) for amendment of plaint has been rejected.

02. Briefly stated, the facts of the case are that the petitioner is plaintiff of Title Suit No. 05 of 2015 which she filed against the defendants/respondents seeking following relief(s):-

“(a) A declaration that plaintiff has right, title,



interest over the suit property and the impugned sale deed dt. 16/3/15 executed by the deftd. 2nd set in favour of deft. 1st set is illegal, void, ab nitio (sic) and fit to be cancelled the same be cancel (sic).

(b) By order of temporary injunction restraining defts. 1st set from interfairing (sic) the possession of plaintiff over the suit land.

(c) Cost of the suit.

(d) Any other relief or reliefs to which the plaintiff (sic) entitled.”

The plaintiff claims her right over the suit land on the basis of an unregistered sale deed dated 19.06.1970 executed by one Bishwanath Mishra in favour of the plaintiff for a consideration amount of Rs. 99/-. It further transpires that the sons of Bishwanath Mishra, respondent nos. 3 and 4 herein and defendants-2nd set before the learned trial court executed a sale deed in favour of defendants 1st set/respondents 1st set on 16.03.2015 with regard to the suit land. The defendants appeared and contested the suit by filing their written statement. After recording of the evidence of the parties, the suit was decreed on contest against these defendants. Thereafter, defendants-1st set filed Title Appeal No. 58 of 2016/ 03 of 2017 against the judgment and decree passed by the learned Sub. Judge-I, Arwal in Title Suit No. 05 of 2015. It further transpires



that on 10.07.2017 and 22.07.2017, the defendants-1st set filed petitions under Order 41 Rule 27 r/w Section 151 of the Code for taking on record 15 documents as additional evidence. The plaintiff opposed the said prayer and filed her rejoinder. The learned first appellate court rejected the objection raised on behalf of the plaintiff and allowed the prayer with regard to 07 documents admitting the same as additional evidence while granting liberty to the petitioner to lead rebuttal evidence, if any, vide order dated 04.12.2017. This order was challenged by the plaintiff preferring a Civil Misc. No. 55 of 2018 before this Court but the same was dismissed vide order dated 30.08.2022 and thus, the order passed for admitting additional evidence with liberty to the plaintiff to lead rebuttal evidence was affirmed. It further transpires that the plaintiff filed petition on 18.01.2023 under Order 6 Rule 17 r/w Section 151 of the Code for amendment of the plaint to explain the context under which the rebuttal evidence was proposed to be filed in the court. The defendants filed rejoinder dated 06.09.2023 opposing the said prayer. After hearing the parties, the learned Additional District Judge-II, Jehanabad rejected the amendment petition and the said order has been challenged in the present civil miscellaneous petition.



03. Learned counsel, Mr. Bikash Kumar Sharma, appearing on behalf of the plaintiff/petitioner submitted that the learned first appellate court failed to appreciate the simple proposition of law that evidence is led to prove a fact pleaded in the pleading and in absence of pleading, no evidence would be legally admissible. The interpretation of the learned trial court that liberty to lead rebuttal evidence simply means permission to cross-examine the witness, if any, produced by the defendants, is perverse interpretation of its earlier order. The learned first appellate court did not consider the fact that the amendment became necessary due to admission of additional evidence of the defendants. The amendment in the plaint at appellate stage is further necessary to introduce the documents proposed to be filed by the plaintiff as rebuttal evidence in view of the liberty granted earlier while admitting the additional evidence. The amendment should have been allowed in view of the subsequent development taking place at the appellate stage. Mr. Sharma further submitted that the plaintiff has not been making any change in his stand and amendment could be allowed at any stage as has been held in a number of cases by Hon'ble Supreme Court. Mr. Sharma further submitted that when the additional evidence of the defendants was allowed at appellate stage and



certain documents were allowed to be brought on record, the plaintiff could not rebut the same without leading her own evidence and unless the same is supported by the pleading, the rebuttal would be meaningless. Moreover, the plaintiff wants to bring on record *Chak Khatiyani* and *Abhidhari Khata Pustika* prepared in the name of plaintiff after conclusion of the consolidation operation in the area. Mr. Sharma further submitted that the area purchased by the plaintiff was reduced during consolidation proceeding by 06 decimals though she purchased an area of 01 acre 06 decimal but at the spot area of *Chak* allotted to her was only 01 acre. These facts are quite relevant for just decision in the case and the learned appellate court ought to have allowed the same.

Mr. Sharma relied on the decision of Hon'ble Supreme Court in the case of *Ms. M. Laxmi and Co. v. Dr. Anant R. Deshpande and Anr.*, reported in *AIR 1973 SC 171* on the point that the court takes notice of subsequent events to shorten litigation, to preserve rights of both the parties and to subserve the ends of justice. Since in the present case, additional evidence has been allowed at the appellate stage, the amendment of the plaintiff ought to have been allowed to subserve the ends of justice. On the same preposition, learned



counsel further relied on the decisions of this Court in the case(s) of *Lal Chandra Agrawal Vs. Sri Rajkishore*, reported in *2011(e) PLJR-PT 1735659 (CWJC No. 11248 of 2011 decided on 04.11.2011)* and *Sunil Kumar @ Pappu Vs. Sri Ramchandra Rai (CWJC No. 15228 of 2012 decided on 30.11.2012)*. Learned counsel also referred to a decision of Punjab & Haryana High Court in Regular Second Appeal in the case of *Chanan Kaur alias Chandan Kaur and Anr. v. Kartari (D) by LRs. and Ors*, reported in *AIR 2004 Punjab & Haryana 331* to submit that in the absence of a plea, no amount of evidence led in relation thereto can be looked into. In the said second appeal, learned Single Judge referred to a Privy Council's decision in the case of *Saddik Mohammed Shah. v. Mt. Saran and Ors.*, reported in *1930 Privy Council 57*, wherein it has been held that no amount of evidence can be looked into upon a pleading which was never put forward. The same preposition was reiterated by the Hon'ble Supreme Court in the case(s) of *Bhagat Singh and Ors. v. Jaswant Singh*, reported in *AIR 1966 SC 1861* and *Bonder Singh and Ors v. Nihal Singh and Ors.*, reported in *AIR 2003 SC 1905*. Mr. Sharma further submitted that liberal view should be taken in allowing prayer for amendment and amendment could be made



even for a claim barred under law of limitation and relied on the decision in the case of *South Konkan Distilleries and Anr. Vs. Prabhakar Gajanan Naik and Ors.*, reported in *AIR 2009 SC 1177*. Lastly, Mr. Sharma relied on the decision of in the case of *Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.*, reported in *2022 SCC OnLine SC 1128* to submit that all amendments are to be allowed which are necessary for determining the real question in controversy between the parties if the amendment does not change the nature of the case and it is not malafide. Mr. Sharma further reiterated that if the documents were not brought on record as additional evidence by the defendants, there would have been no need for the plaintiff to make the prayer for amendment. Thus, Mr. Sharma submitted that impugned order passed by the learned Additional District Judge smacks of arbitrariness and same is not sustainable and is required to be set aside.

04. Learned counsel for the respondents, Mr. Ajay Kumar Singh, vehemently contended that there is no infirmity in the impugned order and the same is required to be sustained. Mr. Singh opposed the submission made on behalf of the petitioner on a number of counts. Mr. Singh submitted that while allowing the additional evidence of



defendants/respondents, the plaintiff/petitioner has been given only a limited right of rebuttal. Now, 'Rebuttal' has been defined in Black's Law Dictionary, which reads as under:

“Rebuttal: *“The time given to a party to present contradictory evidence or arguments; [especially], the [usually] short segment at the end of an oral argument designated for a movant, appellant, or petitioner to counter the other side’s arguments.”*

From the definition, it is evident that rebuttal does not mean the plaint is required to be amended. Learned counsel further submitted that by seeking the amendment, the plaintiff wants to withdraw her admission made in Para-8 of the plaint. Moreover, through the amendment, inconsistent pleas are sought to be incorporated. Learned counsel further submitted that the defendants have not made any change in their written statement and they have only sought to bring on record evidence which did not require any change in the pleadings and hence, it could not be said that as there is change in pleading by the defendants, the same would entitle the plaintiff to make amendment in her plaint. Learned counsel also submitted that there has been no subsequent event or development, rather the pleading was already on record and additional evidence which was necessary



for just decision of the case, was only allowed by the learned first appellate court, the same could not be said to be any subsequent development and the submission made on behalf of the plaintiff on this point are not sustainable. Learned counsel further submitted that the facts sought to be incorporated through amendment were all along in the knowledge and the plaintiff has miserably failed to show why these amendments were not brought at the first instance and how the same could not be incorporated in the pleadings despite due diligence as the fact was always in the knowledge of the plaintiff. Learned counsel further submitted that by seeking the amendment, the plaintiff wants to change the nature of the case as she wants to bring fresh pleadings. Learned counsel further submitted that the amendments sought by the plaintiff are new pleadings and there is no case as such of the plaintiff in her suit. Moreover, these facts were always in knowledge of the plaintiff and she could not take a plea that the facts became known to her only at the stage of appeal. Hence, amendment in this regard cannot be allowed as the same is barred under the provisions of Order 6 Rule 17 of the Code. Learned counsel further submitted that it was incumbent upon the plaintiff to show due diligence in which she has failed miserably and if there is lack of due



diligence, amendment cannot be allowed.

Mr. Singh relied on a recent decision of Hon'ble Supreme Court in the case of *Basavaraj v. Indira*, reported in *(2024) 3 SCC 705* wherein the Hon'ble Supreme Court has held that amendment which would change the nature of the suit cannot be allowed and at the same time if the burden to establish due diligence is not discharged by the party seeking amendment, amendment cannot be allowed.

05. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case. The issue involved in the present petition is whether the plaintiff could have been allowed to amend her pleadings if she has been given a right of rebuttal at the time of allowing additional evidence of the defendants?

06. The submission on behalf of plaintiff are two fold. The plaintiff claims, as matter of right, that she should be allowed to amend her pleadings if additional evidence of defendants was allowed. Second part of submission of the plaintiff is that amendments could be allowed at any stage and the same are required for determining the real question in controversy between the parties. I am afraid the contention of the plaintiff on both counts is misconceived. When there has



been no change in the pleadings of the parties and the additional evidence have been allowed on prayer of the defendants, its rebuttal would not mean bringing amendment in the plaint by the plaintiff or to bring fresh evidence. The learned appellate court has rightly observed that this liberty is only to the extent of right to cross-examine the witnesses of the defendants. The plaintiff could not claim the proceeding before the learned first appellate court allowing additional evidence on behalf of the defendants is a subsequent development/event as no new development has taken place. Allowing additional evidence only means that the evidence which ought to have been taken on record at the first instance but could not be taken on record and the court felt the need of such evidence to enable it to pronounce judgment, such evidence was allowed to be brought on record. Certainly, this is not a subsequent event.

07. It would be apposite to look into the provisions of amendment under Order VI Rule 17 of the Code, which 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.”*

08. The parties are at the stage of first appeal and at this stage for allowing any amendment, the plaintiff was required to satisfy the court that in spite of due diligence, the plaintiff could not have raised the matter before the commencement of trial. The plaintiff has utterly failed in her duty to show that in spite of due diligence, she could not have taken up this matter and pleaded the same before the learned trial court at the first instance.

09. In the light of discussion made here-in-before, I do not think the authorities cited by the learned counsel for the plaintiff/petitioner are of any help to the cause of the petitioner, rather I am of the view that authority cited by the learned counsel for the defendants/respondents in the case of **Basavaraj** (supra) is squarely applicable to the facts of the present case.

10. In view of the discussion made so far, I do not find any infirmity in the impugned order dated 26.09.2023 passed in



Title Appeal No. 58 of 2016 and hence, the same is hereby affirmed.

11. Accordingly, the present civil miscellaneous petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	01-08-2024
Uploading Date	13-09-2024
Transmission Date	NA

