

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.15 of 2023

Baby Devi W/o Late Santosh Sharma, D/o Late Binod Narayan Singh, R/o Village and Post Jalalpura, P.S. and District-Arwal.

... .. Petitioner/s

Versus

1. Uchit Narayan Singh S/o Late Baldhari Singh, R/o Village and Post-Jalpura, P.S. and District-Arwal.
2. Radhakant Sharma, S/o Sri Uchit Narayan Singh, R/o Village and Post-Jalpura, P.S. and District-Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Kumar Gaurav, Advocate Mr. Shashank Kashyap, Advocate
For the Respondent/s	:	Mr. Bikas Kumar Sharma, Advocate Mr. Abneesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-07-2024

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

2. The instant petition is filed under Article 227 of the Constitution of India against the order dated 15.11.2022 passed by learned Sub Judge 1st, Arwal in Partition Suit No. 18 of 2022 whereby and whereunder he rejected the petition dated 31.08.2022 filed on behalf of the plaintiff/petitioner under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter “the Code”).

3. Learned counsel for the petitioner submits that the plaintiff/petitioner has filed Partition Suit No. 18 of 2022 against the defendants/respondents for passing a preliminary decree to the extent of half share in the suit property and also for carving out a share after appointing Survey Knowing Pleader Commissioner

along with other reliefs. Prior to filing of the written submission, an application under Order 6 Rule 17 of the Code has been filed on 31.08.2022 seeking certain amendments in the plaint. Rejoinder was filed on behalf of the defendants and the learned trial court having considered the submissions rejected the amendment application of the plaintiffs *vide* the impugned order dated 15.11.2022.

Learned counsel further submits that the learned trial court rejected the prayer for amendment on the ground that amendments which were sought would replace the original suit property with new set of suit property and thus it would completely change the subject matter of the suit. But this view of the learned trial court is completely wrong and erroneous. The amendment has been sought at the initial stage when the written statement was not filed and there is no change of subject matter since the change is with regard to description of the suit property. Moreover, the change of subject matter is not barred unless it changes the nature of the suit. Till date issues have not been settled in the case. Learned counsel further submits that it is a case for partition and the plaintiff being a lady was not knowing about the details of the properties and for this reason she could not bring all these properties in her plaint which was filed seeking partition. Thus, learned counsel submits that since the amendments have

been sought at the preliminary stage of the suit, the same may be allowed and the impugned order may be set aside.

4. Learned counsel appearing on behalf of the respondents submits that the petition of the plaintiff has been rightly rejected. The petition was filed without any affidavit and in a perfunctory manner. Learned counsel also pointed out that the subject matter of the suit is one of the essentials of the suit and if the subject matter is changed the whole suit would change. Learned counsel also pointed out that even the plaint which has been filed before the learned trial court has not been properly affidavited. If the plaint is not supported by an affidavit in its proper format, the plaint ought not to have been accepted. Learned counsel further submits that if any amendment is allowed at this stage the same would be incorporated in the plaint which has not been filed in proper manner by swearing a proper affidavit. Further, even the application seeking amendment has not been duly affidavited. On these counts the order of the learned trial court should be allowed to stand. Relief, if any, which could be granted to the petitioner is to remand the matter to the learned trial court with direction to the petitioner to file proper application seeking amendment.

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

Admittedly, the partition suit in which the amendment has been sought is at preliminary stage. I am unable to agree with the submission of the learned counsel for the respondent that change in subject matter would result in change in the nature of the suit. If any properties are added or deleted in the schedule of property in a partition suit the suit would remain a suit for partition and its nature would not change. Moreover, Order 6 Rule 17 specifically provides that all amendments shall be allowed which are necessary for adjudication of real controversy between the parties. The challenge to amendment petitioner is on ground of technical defects like non-filing of affidavit etc. The Hon’ble Supreme Court in the case of ***State of Punjab Vs. Shamlal Murari*** reported in ***(1976)1 SCC 719*** observed that “Processual law is not to be a tyrant but a servant not an obstruction but an aid to justice. Procedural prescriptions are the hand maid and not the mistress a lubricant, not a restraint in the administration of justice.” Thus the view of the Hon’ble apex Court is that technicalities

should not be allowed to come in the way of delivering the substantial justice. In the case of *Sugandhi Vs. P. Rajkumar* reported in *(2020) 10 SCC 706* the Hon'ble Supreme Court held that "If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation." For this reason the contention of the learned counsel for the respondent about the application before the learned trial court not being affidavited or the erroneous affidavit attached with the plaint are the errors of technicalities which could always be rectified for which the parties are at liberty to take appropriate steps. But the same could not be allowed to interfere with the cause of justice. Since, the amendment application has been moved at the initial stage and issues are yet to be settled, I think the learned trial court should have allowed the amendment to be incorporated on behalf of the plaintiff while granting liberty to the defendant to rebut the same. If the amendment is not allowed at this stage, the same would result in proliferation of cases.

6. In the light of the discussion hereinbefore, the impugned order dated 15.11.2022 is set aside and amendment application dated 31.08.2022 is allowed with direction to the plaintiff to file proper affidavit in support of the plaint and also in support of the amendment which have been sought to be

incorporated.

7. However, the defendants will be given ample opportunity to rebut/controvert the claim of the plaintiff sought to be brought through the amendment by way of filing additional written statement since it has been brought to the notice of the Court that written statement has already been filed.

8. The learned trial court is also directed to look into the filing of the plaints and applications before it to see that the same are filed in accordance with law following the procedure prescribed for the same.

9. With the aforesaid observations and directions, the instant petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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