

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1744 of 2019

Abdul Samad, S/o Late Md. Hussain, R/o Village Bazidpur, P.S.- Basantpur,
District Siwan.

... .. Petitioner/s

Versus

1. Shukdeo Mahato, S/o Late Bhola Mahato, R/o Village Bazidpur, P.S.-
Basantpur, district- Siwan.
2. Mukhdeo Mahato, S/o Late Bhola Mahato, R/o Village Bazidpur, P.S.-
Basantpur, district- Siwan.
3. Manondra Mahato @ Memu Mahato, S/o Late Makun Mahato, R/o Village
Bazidpur, P.S.- Basantpur, district- Siwan.
4. Deepan Mahato, S/o Late Bihari Mahato, R/o Village Bazidpur, P.S.-
Basantpur, district- Siwan.
5. Hari Mahato, S/o Late Bihari Mahato, R/o Village Bazidpur, P.S.- Basantpur,
district- Siwan.
6. Ram Deo Mahato, S/o Late Raghunandan Mahato, R/o Village Bazidpur,
P.S.- Basantpur, district- Siwan.
7. Ramashary Mahato, S/o Late Yadu nandan Mahato, R/o Village Bazidpur,
P.S.- Basantpur, district- Siwan.
8. Janak Mahato, S/o Late Yadu nandan Mahato, R/o Village Bazidpur, P.S.-
Basantpur, district- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Advocate Mr. Ravi Bhushan, Advocate Mr. Navin Kumar, Advocate Mr. Mohit Kumar, Advocate
For the Respondent/s	:	Mr. Ramchandra Sahni, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 01-03-2024

Heard learned counsel for the petitioner and learned
counsel for the respondents on the point of admission and I intend
to dispose of the present petition at the stage of admission itself.

2. The instant petition has been filed for setting aside
the order dated 23.10.2019 passed by the learned Munsif 2nd,
Siwan in Title Suit No. 182 of 2016 whereby and whereunder the



learned Munsif 2nd, Siwan rejected the amendment petition dated 11.06.2019 filed by the plaintiff holding that it will change the nature of the suit.

3. Learned counsel for the petitioner submits that the petitioner is plaintiff before the learned trial court and has filed Title Suit No. 182 of 2016 seeking declaration of title over the suit property apart from permanent injunction. During pendency of the suit, the plaintiff was dispossessed by the defendants who are respondents in the present case and, therefore, the plaintiff filed a petition dated 11.06.2019 under Order VI Rule 17 of the Code of Civil Procedure (hereinafter 'the Code') for making amendment in the plaint on the ground of subsequent event. The plaintiff has sought amendment for bringing on record the act of the defendants in dispossessing the plaintiff from the suit property and sought relief for recovery of possession and also sought change in the boundary. Learned counsel further submits that by the said amendment there will be no change in the nature of the suit but the learned trial court, under some misconception of law, has held that by way of this amendment, nature of the suit would change. Learned counsel relied on the decision of the Hon'ble Apex Court in the case of *Sampath Kumar vs. Ayyakannu & Anr.*, reported in (2002) 7 SCC 559 : AIR 2002 SC 3369 in support of the contention that if the subsequent events of declaration of title and



recovery of possession are incorporated in the suit for permanent injunction the nature of suit would not change. Learned counsel further relied on the decision of the Hon'ble Supreme Court in the case of ***Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.***, reported in **(2006) 4 SCC 385 : AIR 2006 SC 1647** on the point that the merits of the proposed amendment should not be gone into at the stage of allowing the amendment. Learned counsel further submits that the trial is at the initial stage as only issues have been framed and the parties have been directed to lead their evidence. In this regard learned counsel placed reliance on the decision of this Court in the case of ***Bharat Prasad Vs. Most. Pana Devi & Ors.***, reported in **2016 (2) PLJR 413** and submits that at initial stage amendment could be liberally allowed. Thus, learned counsel submits that the learned trial court has failed to exercise its jurisdiction vested in it by passing a non-speaking and cryptic order without consideration of the facts as mentioned in the amendment petition.

4. Learned counsel appearing on behalf of the respondents vehemently contents that the plaintiff has sought amendment at a number of places by seeking deletion of certain words and terms and has also sought a new relief which would change the nature of the suit. Learned counsel further submits that the matter before the learned trial court has proceeded and issues



have been framed and it is not at the pre-trial stage. Thus, learned counsel submits that the instant petition has got no merit and the same may be dismissed.

5. If the plaintiff wants to bring certain amendment in his plaint, he can do so if the amendments fulfill the provisions 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 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.”

6. Evidently, amendment can be brought at any stage before commencement of trial and even after its commencement under certain condition. In ***Baldev Singh & Ors. vs. Manohar Singh & Anr.***, reported in (2006) 6 SCC 498, the Hon’ble Apex Court has held that the commencement of trial as used in proviso to Order VI Rule 17 of the Code must be understood in



limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and adducing of arguments. Admittedly, in the present case, only issues have been framed. Amendment at this stage should not cause any prejudice to the respondents.

7. Having regard to the rival submission, it is apparent that the plaintiff claimed that he was subsequently dispossessed after filing of the suit. The suit was filed for declaration of title over the suit property and the defendants dispossessed the plaintiff. If the amendment is not allowed, it will lead to unnecessary multiplicity of litigation. Such amendment also appears necessary for the purpose of determination of real controversy between the parties. So far as the finding of the learned trial court regarding change in the nature of the suit is concerned, I think the same is misconceived. It is a suit for declaration of title and confirmation of possession or recovery of possession are merely incidental.

8. Without going into further merits of the case and considering the stage of the case before the learned trial court and the nature of amendments, the application dated 11.06.2019 filed before the learned trial court is allowed and order dated 23.10.2019 passed by the learned Munsif 2nd, Siwan in Title Suit No.182 of 2016 is set aside. However, the respondents will be given ample opportunity to rebut/controvert the claim of the



petitioner/plaintiff sought to be brought through amendment by way of filing amended written statement/additional written statement.

9. Accordingly, the instant petition stands allowed.

10. It is made clear that this Court has not expressed its opinion on merits of the case.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.03.2024
Transmission Date	NA

