

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.909 of 2017**

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Mahesh Chand Sidh son of Late Dr. Ishwar Chand Sidh Resident of Mohalla
Balua Gopalpur, P.O. - Motihari, P.S. - Motihari Town, District - East
Champaran.

... .. Petitioner/s

Versus

Kumar Satyam son of Late Laxmi Prasad Singh Resident of Village -
Gopalpur, P.O. Motihari, P.S. - Motihari Town, District - East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Adv. Md. Farooq, Adv.
For the Respondent/s	:	Mr. Bikas Kumar Sharma, Adv. Ms. Madhuri Kumari, Adv.

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

Date : 07.01.2025

The present civil miscellaneous petition has been filed for setting aside the order dated 07.12.2016 passed by learned Sub Judge VIII, Motihari in Title Suit No. 409 of 2015 whereby and whereunder the learned Sub Judge allowed the petition dated 09.09.2016 filed by the respondent/defendant under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) for amendment in the written statement.

2. Briefly stated, facts of the case, as it appears from the record, are petitioner is plaintiff of Title Suit No. 409 of 2015 and has filed the suit for declaration of sale deed dated 17.01.2012 to be forged, fabricated and illegal and for setting aside the same declaring the right and title of the plaintiff over the suit property apart from other reliefs. The plaintiff claimed the suit property to be his ancestral property in respect of which a



lease deed was executed by the father of the plaintiff in favour of the father of the respondent for twelve years. For non-compliance of the terms of the lease deed the plaintiff, his father and his brothers filed a Title Suit bearing no. 37 of 1991 against the defendant. During the pendency of the title suit, the lease deed came to an end. The defendant of the said suit asked the plaintiff to transfer the portion of the suit property in favour of the defendant. The plaintiff later on agreed to transfer some portion of the suit land in favour of the defendant. The plaintiff executed a sale deed dated 17.01.2012 in favour of the defendant without any consideration money. It was in terms of the said sale deed that after the plaintiff would get title and possession in the Title Suit No. 37 of 1991 then only the sale deed would become effective. However, the defendant by applying pressure on the plaintiff, got incorporated the fact about consideration money being paid though no consideration amount was ever paid. It further transpires that the defendant made his sister file an appeal against the judgment and decree of Title Suit No. 37 of 1991 in order to again pressurize the plaintiff to transfer certain portion of land in favour of his sisters and when the plaintiff refused, the defendant started fencing the suit property forcibly. On the aforesaid facts, Title Suit No. 409 of 2015 was filed. The defendant/respondent joined the issue with the plaintiff. The



defendant admitted the lease deed executed by the father of the plaintiff in favour of his father. The defendant denied that the sale deed dated 17.01.2012 was executed without payment of any consideration money. In fact no sale deed was executed on 17.01.2012 and the defendant has been coming into possession of the land on the basis of sale deed executed on 24.10.2011. It also appears that during pendency of the Title Suit No. 37 of 1991, a written agreement was entered into between the plaintiff and the defendant on 24.10.2011. According to the compromise document, the plaintiff executed the sale deed dated 24.10.2011 in favour of the defendant and it was incumbent upon the defendant not to oppose the passing of the decree in Title Suit No. 37 of 1991. According to the terms of agreement the plaintiff got the sale deed registered. Further case of the defendant is that the father of the plaintiff was in need of the money and due to this fact, the plaintiff requested to sell the land of Schedule 1 in favour of the defendant. For the consideration amount of Rs. 3,00,000/- the plaintiff executed and registered the sale deed. The defendant further claimed that he was in possession of the suit land since execution of lease deed dated 09.06.1981 and after execution of the sale deed, the defendant has been coming into possession of the suit property and *jamabandi* was created in his favour and the defendant also started getting the revenue receipts.



Except for property of Schedule 1 the plaintiff has been in title and possession of the rest of the suit property after Title Suit No. 37 of 1991 was decreed. At the same time, defendant has been having title and possession over the Schedule 1 property of the plaintiff. The possession of the defendant of Schedule 1 property was also found in a proceeding under Section 144 of the Cr.P.C. in Case No. 1056M of 2015 by the learned Sub Divisional Magistrate. During pendency of the suit and before framing of the issues, an amendment application has been filed by the defendant to make amendment in paragraph no. 16, 17 and 18 of his written statement and a rejoinder to the same was filed on behalf of the plaintiff. The learned trial court vide order dated 07.12.2016 allowed the amendment application which is under challenge before this Court in the present civil miscellaneous case.

3. Learned counsel for the petitioner submits that the impugned order is perverse, illegal and arbitrary and hence, the same is not sustainable. While allowing the amendment petition filed by the defendant/respondent, the learned trial court did not consider that admission made in the written statement were sought to be withdrawn which would cause severe prejudice to the petitioner. Learned counsel further submitted that the amendment is of such nature that it would cause prejudice to the



petitioner and cannot be compensated in terms of cost. The amendment has the effect of depriving the plaintiff a right which has accrued to him on account of admission made in the written statement. The learned counsel, further, submitted that the bare perusal of the petition dated 09.09.2016 filed for amendment in the written statement makes it clear that amendment sought by the defendant/respondent has changed the entire written statement. The whole case of the defendant has been narrated in paragraph no. 16 to 18 and now the defendant wants to delete the same and substitute these paragraphs with entirely new facts with new averments. The Hon'ble Supreme Court, in a large number of cases, has held that when an amendment seeks to withdraw the statement made earlier in the written statement such an amendment could not be allowed. Such withdrawal of admission by way of amendment is not permissible. Thus, the learned counsel submitted that the amendment sought by the defendant/respondent are not just and proper and would result in causing prejudice to the plaintiff/petitioner and the learned trial court, committing illegality, has passed an erroneous order and is fit to be set aside.

4. Countering the submission made by the learned counsel for the petitioner, learned counsel for the defendant/respondent submitted that the impugned order does not



suffer from any illegality or jurisdictional error. By way of impugned order, the records of proceedings have been set right. The amendments have been sought at the earliest available opportunity and before the settlement of issues by the Court. Unless the issues are settled, the amendments sought cannot be denied to the defendant/respondent. Learned counsel next submitted that the matter in controversy revolves around a small piece of land measuring 1 Katha 11 ½ Dhur equivalent to about 4000 sq. ft. of the Survey Plot No. 155(part), appertaining to Khata no. 64 of Village - Gopalpur presently known as Balua Tal in Motihari Town, District - East Champaran. The said land is part of a big chunk of land measuring about 1 Bigha 2 Katha 13 Dhur consisting of several plots. The father of the respondent took the said land on lease from the father of the petitioner and started running a petroleum outlet of Indian Oil Corporation on the land taken on lease but after death of father of the plaintiff, the mother of the plaintiff executed the registered deed of lease dated 09.06.1981 in favour of the respondent's father for a further period of 20 years with liberty to the lessee to get it extended for a further period of 20 years more if the lessee exercises such option six months prior to the expiry of the period of 20 years. Prior to expiry of the 1st term of 20 years of lease dated 09.06.1981, the petitioner, claiming himself as heir of the



original lessor, filed Title Suit No. 37 of 1991 to evict the respondent on false, fabricated and frivolous grounds. During pendency of the litigation, the petitioner under his pecuniary requirements offered to sale the suit land to the respondent for valuable consideration besides the condition that the respondent would not contest the prayer for eviction in the suit. The parties further agreed that the amount of Rs. 3 lakh required to be returned will be adjusted towards the consideration money. Accordingly, sale deed dated 24.10.2011 in regard to the suit land was executed in favour of respondent and a compromise petition setting out the details of compromise was filed on the same day in the Court in Title Suit No. 37 of 1991. When the present suit was filed respondents suitably replied the same but due to inadvertence on the part of the respondent counsel, the case of the respondent was not properly described in the pleadings. Learned counsel next submitted that to explain the defence version, the petition for amendment was filed on 09.09.2016 which was opposed by filing a cryptic rejoinder by the plaintiff/petitioner merely on the ground that amendment petition is an afterthought. Learned counsel further submitted that it is a well settled principle of law that an admission may be explained by making suitable amendment in pleadings as well as by leading evidence. The petitioner has nowhere disclosed the admissions,



which the petitioner apprehends, to be wiped out by the proposed amendment. The petitioner has also not brought on record the agreement dated 24.10.2011 which shows compromise of dispute between the parties. The amendment has been simply made to explain the circumstances in which the sale deed had been executed in favour of respondent and the manner in which the consideration money was paid. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***L.C. Hanumanthappa Vs. H.B. Shivakumar*** reported in ***(2016) 1 SCC 332*** wherein the Hon'ble Supreme Court upheld the amendment allowed by the High Court even for a time barred claim while holding that doctrine of relation back would not apply to the facts of the case for the reason that the Court which allowed the amendment expressly allowed it subject to the plea of limitation.

Thus, learned counsel submitted that the admission may be explained by making suitable amendment in pleading as well as by giving evidence and as the same has been allowed vide the impugned order and there is no infirmity in it and the same needs to be sustained.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record.



6. Order VI Rule 17 of the Code provides for amendment in pleading and it 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”.

7. The main opposition of the petitioner to the amendment of the respondent is on the ground that an admission is being sought to be withdrawn by this amendment but the admission which has been pointed out was regarding execution of agreement dated 24.10.2011 whereby the defendant/respondent agreed to support the petitioner in disposal of Title Suit No. 37 of 1991. But from the perusal of the amendment application, I find that no such admission has been withdrawn rather in paragraph 17, the said same admission has been mentioned with further details and explanation. Apart from that there could be no other objection to the amendment application as the amendments are mostly in the nature of



clarification/explanation though, the same has been sought to be incorporated after deleting certain paragraph and substituting the same with new paragraphs in the written statement. Moreover, the amendments have been sought prior to commencement of trial as issues are yet to be settled.

8. The decision of the Hon'ble Supreme Court in the case of ***Usha Balashaheb Swami and Ors. vs. Kiran Appaso Swami and Ors., (2007) 5 SCC 602*** is on the point of different yardsticks for amendment in plaint and written statement and paragraph no.19 of the said judgment reads as under:-

“19. It is equally well-settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.”

9. 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. Paragraph 25 and 70 are extracted hereinafter for better appreciation of law on this point:

“25. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be



properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement. (See [South Konkan Distilleries & Anr. v. Prabhakar Gajanan Naik & Ors.](#), (2008) 14 SCC 632)

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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 malafide, 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)”

10. Applying the aforesaid decisions of the Hon’ble Supreme Court to the facts of the case in hand, I am of the



opinion that the amendments do not take away any admission and would not cause any prejudice to the other side. So far delay in bringing the amendment and incorporating the same at a later stage is concerned, the plaintiff needs to be compensated by payment of some cost.

11. For the aforesaid reasons, I do not find any infirmity in the impugned order dated 07.12.2016 and the same is affirmed subject to payment of cost of Rs. 5,000/- 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. The learned trial court is directed to give ample opportunity to the plaintiff/petitioner to rebut/controvert the amendment by allowing the plaintiff/petitioner to amend his plaint if he so desires.

12. Accordingly, the present petition stands disposed of with abovenoted modification in the impugned order.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	03.12.2024
Uploading Date	07.01.2025
Transmission Date	N/A

