

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1602 of 2017

1. Mahatam Yadav and Son of Late Nihora Yadav
2. Sheo Pujan Yadav Son of Late Saryu Yadav
3. Nandjee Yadav Son of Late Saryu Yadav
4. Most. Yotia Kuer Wife of Late Nihora Yadav All are residents of Village Kabirpur Tola Emlami P.O. Kabirpur, P.S. Mairwa, District Siwan.

... .. Petitioner/s

Versus

1. Chhathu Mallah and Son of Late Lalji Mallah
2. Bhola Prasad @ Bhola Mallah Son of Late Ramautar Mallah Both are residents of Village Kabirpur, Tola, Emlahi, P.O. Kabirpur, P.S. Miruja, District - Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Akhileshwar Kumar Shrivastva, Adv.
For the Respondent No. 2	:	Mr. Ajay Kumar Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 07-01-2025

Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. The petitioners are aggrieved by the order dated 30.06.2017 passed by learned Munsif 2nd, Siwan in Title Suit No. 10 of 2011 whereby and whereunder the learned trial court refused the prayer of the petitioners in the petition filed under Order 6 Rule 17 of the Code of Civil Procedure (in short “the Code”) for making amendment in the written statement.

3. The learned counsel for the petitioners submits that petitioners are defendants before the learned trial court in Title

Suit No. 10 of 2011 filed by the plaintiffs/respondents. The suit has been filed against the defendants for declaration that plaintiffs have right of easement over the land in question by utilizing the same as their own pathway. The use of the pathway was obstructed by the defendants/petitioners. The plaintiffs claimed that their residential house is situated over Khata No. 268, Survey Plot No. 756 in Village Kabirpur, Tola Emlahi, P.S. Mairwa, Siwan. The plaintiffs further claimed that Survey Plot No. 747 and 748 are ancestral homestead land of the plaintiffs which is situated in the middle of Survey Plot No. 756 and village road Survey Plot No. 710. Plaintiffs have been using the North boundary of Plot No. 756 and middle of East boundary of Survey Plot No. 748 and Survey Plot No. 747 and utilizing the same as their pathway since long. After summons the defendants/petitioners appeared and filed their written statement denying the allegation and claim of the plaintiffs on factual and legal aspects of the suit. The defendants/petitioners claimed that the plaintiffs never used to go or used the village road by crossing the boundary line of Survey Plot No. 747 and 748. In the year 1992, the plaintiff no. 2 built his house facing east upon Survey Plot No. 756 which is just adjacent to West Plot No. 757 on which there was a hut of plaintiff no. 1. There is vacant land

in between the house of plaintiff no. 2 and plaintiff no. 1 and there is also vacant land of Survey Plot No. 756 towards South of house of plaintiff no.2. Plaintiffs have been utilizing the said vacant land as pathway to go to village road adjacent to Plot No. 710. During pendency of the suit, when the suit was at preliminary stage and issues have not been framed, the petitioners filed an application under Order 6 Rule 17 of the Code on 23.11.2015 seeking amendment in para 20 of their written statement. On 06.02.2016 the plaintiffs/ respondents filed rejoinder to the amendment petition filed by the petitioners raising objection that the proposed amendments are *malafide* and unnecessary and the same would create complication. On 30.06.2017 the learned trial court, after hearing the parties, rejected the amendment petition of the petitioners. The said order is under challenge before this Court.

4. Learned counsel for the petitioners further submits that the impugned order has been passed only on the ground that new facts are being introduced by virtue of amendment application filed on behalf of the petitioners. Learned counsel further submits that the amendment sought to be brought on record by the petitioners are clarificatory in nature. In the written statement, the petitioners have stated that the plaintiffs

have been utilizing their pathway for approaching the village road which existed on Survey Plot No. 710 through North-east of Survey Plot No. 757 and 759 but how many plots lie in between Survey Plot No. 757 and Plot No. 710 and how many plots are crossed for approaching the Plot No. 710 could not be mentioned in the written statement. The petitioners want to clarify the position by way of the amendment. Even the rejoinder of the plaintiff is silent on the merits and a vague objection has been raised that amendment is *malafide* and unnecessary and the same may create complication. Learned counsel further submitted that learned trial court committed error while passing the impugned order and misdirected it by recording the finding which is completely illegal. The amendment does not introduce any new facts and the same is purely clarificatory in nature. Lastly, the learned counsel submits that impugned order is not sustainable and the same be set aside.

5. Learned counsel appearing on behalf of the respondents submits that there is no infirmity in the impugned order and it is an order wherein the contention of the petitioners have been taken into consideration and therefore, the learned trial court did not find any merit in the application for

amendment and dismissed the same. The petitioners want to bring unnecessary complication in the case through the amendments and they want to make out a new case. Learned counsel further submits a valuable right has accrued to the plaintiffs/respondents and the petitioners want to nullify the said right. Thus learned counsel submits that the application for amendment has rightly been rejected as it was *malafide* and malicious. Learned counsel further submits that no passage existed which may be used as pathway as claimed by the defendants. Moreover, if the defendants/petitioners have any such claim they could have asked for appointment of Survey Knowing Pleader Commissioner and could have asked for its report to show the existence of any such pathway. Thus, learned counsel submits that there is no infirmity in the impugned order and the same needs no interference.

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

7. 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”.

8. Apparently, the amendment has been sought prior to settlement of the issues. However, the amendment has been sought in the written statement and the standard for allowing the amendment for plaint and written statement differs. The defendants are allowed to take contradictory or even inconsistent plea in their written statement and amendment in written statement are more liberally allowed. 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. Similar view has been taken by the Hon'ble Supreme Court in the case of ***Sushil Kumar Jain vs Manoj Kumar & Anr.*** reported in **AIR 2009 SC 2544** relying on ***Usha Balashaheb Swami*** (Supra) wherein it has been held in paragraph 10 and 11 as under:

“10. At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action (See [Baldev Singh & Ors. vs. Manohar Singh & Anr.](#) AIR 2006 SC 2832).

11. Similar view has also been expressed in [Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.](#) AIR 2007 SC 1663. It is equally well settled that in the case of an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.”

10. Coming to the facts of the case, the suit is at its initial stage and the amendment sought by the defendants/petitioners is with regard to mentioning of plots lying in between Survey Plot No. 757 and Survey Plot No. 710. This would not even amount to introducing any new fact or causing prejudice to the plaintiffs/respondents or could not be said to be *malafide*. Rather, the amendment sought by the

petitioners may help the learned trial court in arriving at a just decision.

10. Considering the aforementioned facts and circumstances, I think the learned trial court committed error of jurisdiction while passing the impugned order and the same could not be sustained. Hence, the impugned order dated 30.06.2017 is set aside and the application dated 23.11.2015 is allowed.

11. Accordingly, the present petition stands allowed.

12. However, it goes without saying that learned trial court would provide sufficient opportunity to the respondents for rebutting/controverting the amendment, if they so desire.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	AFR
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