

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.181 of 2021

Raja Ram Choudhary Son of Late Bal Krishna Choudhary Resident of Village- Kharhara, P.S.- Barahat, District- Banka, State- Bihar.

... .. Petitioner

Versus

1. Aditya Chandra Jha Son of Late Ishan Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, District Banka, State- Bihar.
2. Bibhash Chandra Jha Son of Late Prem Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, District Banka, State- Bihar.
3. Ravi Chandra Jha Son of Late Hem Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, District Banka, State- Bihar.
4. Rajesh Chandra Jha Son of Late Hriday Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, District Banka, State- Bihar. Presently residing at Hazaribagh, Behind Mount Carmel School, Hazaribagh, P.O., P.S., Sub Division and District Hazaribagh, Jharkhand.
5. Brajesh Chandra Jha Son of Late Ishan Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
6. Akhilesh Chandra Jha Son of Late Ishan Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
7. Ratnesh Jha Son of Late Jai Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
8. Nikhilesh Chandra Jha Son of Late Gyan Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
9. Amaresh Chandra Jha Son of Late Gyan Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
10. Krishna Chandra Jha Son of Hem Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
11. Sheo Chandra Jha Son of Hem Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
12. Prakash Chandra Jha Son of Hem Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
13. Prabhash Chandra Jha Son of Late Prem Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.
14. Mihir Chandra Jha Son of Late Prem Chandra Jha Resident of Village Karhara, P.O. Karhara, P.S. Barahat, Sub-Division and District Banka, State- Bihar.

... .. Respondents



Appearance :

For the Petitioner/s : Mr. Ujjwal Kumar Mishra, Advocate
For the Respondent/s : Mr. Amit Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 12-05-2025

The matter has been taken up on mentioning being made on behalf of the petitioner.

02. Heard the learned counsels for the respective parties and I intend to dispose of the present petition at the stage of admission itself.

03. The petitioner is aggrieved by the order dated 24.09.2019 by the learned Munsif, Banka in Title Suit No. 18 of 2018, whereby and whereunder the learned Munsif allowed the application filed under Order VI Rule 17 r/w Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') by the respondent nos. 1 to 3 for amendment of the plaint.

04. Learned counsel for the petitioner submits that the petitioner is defendant no. 11 before the learned trial court and respondent nos. 1 to 3 are plaintiffs who have filed Title Suit No. 18 of 2018 seeking following relief(s):-

“(i) For that a Decree be passed declaring the consideration amount paid by the Plaintiffs’ father, grandfather whatsoever of the Performa Defendant and received by the Defendant’s father Hriday Chandra Jha a



charge upon the suit property.

(ii) A mandatory injunction be passed directing the Defendant, Rajesh Chandra Jha in satisfaction of charge to execute Sale Deed annexed to the suit property in favour of the plaintiff and other Performa Defendants.

(iii) A permanent injunction be passed directing the Defendant Rajesh Chandra Jha not to sell and convey the suit property in favour of any intending purchaser or purchasers other than the Plaintiffs and Performa Defendants.

(iv) Any other relief or relief(s) as this learned court deemed to be just and proper and the plaintiff is entitled for.”

Learned counsel for the petitioner further submits that the defendant no. 11 was not made party in the suit at the time of filing of the suit and subsequently, he was impleaded as party, who appeared and filed his written statement on 02.03.2019. During pendency of the suit, an application under Order VI Rule 17 of the Code has been filed by the plaintiffs No. 1 to 3 on 29.04.2019 whereby a number of amendments were sought to be made in the plaint. The petitioner/defendant no. 11 and defendant no. 1/respondent no. 4 have filed joint objection to the said amendment application.



05. Learned counsel for the petitioner further submits that by way of said amendment application, the plaintiffs have tried to change the nature of the suit. Learned counsel referred to Paragraph-10 of the plaint along with the amendment sought to be incorporated as Paragraph-10(b) submitting that though the petitioner is purchaser of limited portion of the suit property and the suit property was sold to a number of persons, only the petitioner has been made party and relief has been sought against him. Learned counsel further submits that earlier the suit was filed for declaration that the consideration amount paid by the plaintiffs' father, grandfather and whatsoever of the proforma defendant and received by the defendant's father, Hriday Chandra Jha, was a charge upon the suit property and subsequently a mandatory injunction in this regard has also been sought that the defendant, Rajesh Chandra Jha, be directed to execute sale deed annexed to the suit property in favour of the plaintiff and other proforma defendants in satisfaction of the charge. Now the plaintiff nos. 1 to 3 want to add a relief that the sale deed executed by Rajesh Chandra Jha in favour of the petitioner was *void-ab-intio*, illegal and inoperative apart from other relief(s). Learned counsel further submits that the amendment would completely change the nature of the case and



such amendment could not be allowed. Learned counsel further submits that the amendment sought by the plaintiff nos. 1 to 3 is not necessary for the purpose of determining the real questions in controversy between the parties. Learned counsel further submits that the amendment sought is beyond the pecuniary jurisdiction of the court of learned Munsif as the suit has been valued at Rs 4,47,000/- after amendment and the same takes out the suit from the jurisdiction of court of learned Munsif, such amendment could not be allowed. Learned counsel further submits that this fact has not been taken into consideration by the learned Munsif that the plaintiffs have filed the suit for recovery of possession from the purchaser/defendant no. 11 and by the amendment these plaintiffs want to set up a new case contradicting their earlier pleading. Learned counsel further submits that the learned trial court has not appreciated that by way of the amendment, the plaintiffs have sought the overhauling of the plaint. Learned counsel further submits that grave prejudice has been caused to the defendant no. 11, as the learned trial court did not allow him to file additional written statement. Thus, the learned counsel submits that on these grounds the impugned order is bad and the same needs to be set aside.



06. The contention of learned counsel for the petitioner has been vehemently opposed by the learned counsels appearing on behalf of respondent nos. 1, 2, 3 and respondent no. 4. Learned counsel for respondent no. 1 to 3 submits that the trial has not commenced and the suit is still at preliminary stage. So, at this stage if amendment is allowed, the other side would get ample opportunity to rebut the contention and no prejudice would be caused to the other side. Learned counsel further submits that in the sale deed, the vendor of the petitioner has given the boundary of the whole of the land instead of his share sold to the petitioner and the sale deed of the petitioner is vague. For this reason, if this issue is not taken up for adjudication, the dispute would remain and there would be no final adjudication. Learned counsel further submits that partition had already taken place amongst the co-sharers and still, if more than the share has been sold out by one of the co-sharers, this fact has to be brought to the notice of the court. Learned counsel further submits that the counsel for the plaintiffs before the learned trial court did not tell them that many relevant facts for resolution of the disputes between the parties are left to be mentioned in the plaint and the actual relief for which the plaintiffs are entitled have not been mentioned in the relief



portion of the plaint and for this the amendments are necessary. Therefore, for the fault of their counsel, the plaintiffs should not be made to suffer. Learned counsel further submits that the amendments sought to be incorporated does not change the nature of the suit and there was no malafide intention of the plaintiffs in seeking amendment in their plaint as the said amendment is necessary for determination of real controversy between the parties. Learned counsel referred to the decision of Hon'ble Supreme Court in the case of ***Lakha Ram Sharma Vs. Balar Marketing Pvt. Ltd***, reported in ***AIR ONLINE 2003 SC 749*** wherein the Hon'ble Supreme Court has held that it is settled law that while considering whether the amendment is to be granted or not, the Court does not go into the merits of the matter and decide whether or not the claim made therein is bonafide or not. The Hon'ble Supreme Court further held that it is also settled law that merely because an amendment may take the suit out of the jurisdiction of that Court is no ground for refusing that amendment. Thus, the learned counsel submits that even if a pecuniary jurisdiction might change by amendment, that is for the consideration of the trial court and on this ground, the amendment could not be rejected. Learned counsel conceded that as the defendants have not been given opportunity for



rebuttal of the amendment by allowing them to file additional/amended written statement, the same may be allowed otherwise it may cause prejudice to the petitioner. Thus, learned counsel submits that there is no infirmity in the impugned order and it does not need any interference.

07. Learned counsel appearing on behalf of respondent no. 4 submits that no new case is being made out as the relief in the original plaint itself mentions that consideration amount paid the consideration amount paid by the plaintiffs' father, grandfather of the proforma defendant and received by the defendant's father, Hriday Chandra Jha, was a charge upon the suit property and everything flows from it. Therefore, there will be no change in the nature of the suit since the relief now being sought are with regard to sale deed executed for the same property on which the charge is being claimed.

08. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Order VI Rule 17 of the CPC 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”.

From the first part of the provision, it is apparent that and all such amendments could be allowed which may be necessary for the purpose of determining the real questions in controversy between the parties.

09. Now, the Hon’ble Supreme Court in the case of ***Revajeetu Builders & Developers v. Narayanaswamy & Sons***, reported in ***(2009) 10 SCC 84***, after a long discussion on law relating to amendment under Order VI Rule-17 held in Paragraph 63 as under:

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such*



prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

10. Further, the Hon’ble Supreme Court in the case of ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.***, reported in **2022 SCC OnLine SC 1128**, summarized the law on the point of amendment in paragraph 70 in the following manner :

“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 mala fide, 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.”

11. Coming back to the facts of the case, the suit is still at the stage of settlement of issues and issues are yet to be settled. If the trial has not commenced, the parties are in the same situation as if the plaint has just been filed. Whatever be the claim of learned counsel for the petitioner regarding change of the nature, the same is hardly material at this stage. If trial has yet to commence, there could be no prejudice or grievance to the petitioner as the petitioner would have a chance to meet the case set up in the amendment. It is well established rule of law that for complete justice between the parties, to minimise



the litigation and to prevent unnecessary harassment, the amendment of the pleadings can be allowed. Further, the matter raised in the amendment would not change the original controversy between the parties rather it is necessary for doing complete justice and to minimise the litigation between the parties and hence, there appears no error of of jurisdiction in passing the impugned order by the learned trial court.

12. The learned counsel for the petitioner has also taken objection to the fact that amendment would take out the suit from the jurisdiction of the court of learned Munsif. But, the issue stands settled with the decision of Hon'ble Supreme in the case of ***Lakha Ram Sharma*** (supra) wherein it has been held that merely because an amendment may take the suit out of the jurisdiction of that court is no ground for refusing the amendment. So far as claim of the learned counsel about delay is concerned, since the trial has not commenced, delay is immaterial. However, I find some merit in the submission of learned counsel for the petitioner that prejudice has been caused to the petitioner, as he has not been allowed to file additional/amended written statement. When the trial court has allowed the amendment application of the plaintiffs, it was incumbent upon the learned trial court to give an opportunity to



the defendants for filing amended/additional written statement and if the said opportunity was not given that would make the order improper.

13. Having regard to aforesaid facts and circumstances and law as laid down in the case(s) of *Revajeetu Builders & Developers* (supra) and *Life Insurance Corporation of India* (supra), I do not find any infirmity in the impugned order so far as allowing the amendment application of the plaintiffs is concerned. However, the learned trial court ought to have given an opportunity to the defendants for filing amended/additional written statement.

14. Therefore, the impugned order dated 24.09.2019 is affirmed with modification that the learned trial court is directed to give ample opportunity to the defendants to rebut/controvert the amendments sought by the plaintiffs by way of filing an additional/amended written statement.

15. Accordingly, the present petition stands disposed of.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.05.2025
Transmission Date	NA

