

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.257 of 2023**

Dr. Ratan Kishore Tewary, son of Late Uday Kishore Tiwary, Rtd. Dist. and Session Judge, Resident of Mohalla Jogsar, Ward no.- 7/20, P.O.- Bhagalpur, P.S.- Kotwali, Dist.- Bhagalpur.

... .. Petitioner/s

Versus

1. Pranav Tiwary son of Late Deep Narayan Tiwary, resident of Mohalla-Jogsar, Ward no.- 7/20, P.O.- Bhagalpur, P.S.- Kotwali, Dist.- Bhagalpur.
2. Hemant Tiwary, son of Late Deep Narayan Tiwary, resident of Mohalla-Jogsar, Ward no.- 7/20, P.O.- Bhagalpur, P.S.- Kotwali, Dist.- Bhagalpur.
3. Santosh Tiwary, son of Late Deep Narayan Tiwary, resident of Mohalla-Jogsar, Ward no.- 7/20, P.O.- Bhagalpur, P.S.- Kotwali, Dist.- Bhagalpur.
4. Babbu Choubey, son of Shri Gopal Choubey, Resident of Mohalla- Jogsar, Ward No.- 7/20, P.O.- Bhagalpur, P.S.- Kotwali, Dist.- Bhagalpur.
5. Ratan Kumar Santhaliya, S/o Satya Narayan Santhalia Builder and Developer, Santhaliya Super Market, Marwari Tola, Mohalla Sujaganj Lane, P.O.- Bhagalpur, P.S.- Kotwali, Dist.- Bhagalpur.
6. Rupa Dubey W/o Diwakar Prasad Dubey, D/o Late Uday Kishore Tewary, Paternal Address-Mohalla-Jogsar, Ward No. 20, Chandi Prasad Lane, P.O. Bhagalpur, P.S. Kotwali, Dist. Bhagalpur.
7. Sharan Kishore Tewary, s/o Late Uday Kishore Tewary, Resident of Mohalla-Jogsar, Ward No. 20, Chandi Prasad Lane, P.O. Bhagalpur, P.S. Kotwali, Dist. Bhagalpur.
8. Chitra Pandey, W/o Bimal Pandey, D/o Late Uday Kishore Tewary, Paternal Address-Mohalla-Jogsar, Ward No. 20, Chandi Prasad Lane, P.O. Bhagalpur, P.S. Kotwali, Dist. Bhagalpur.
9. Dr. Neel Kishore Tewary, S/o Late Ram Narayan Tewary, Mohalla-Jogsar, Ward No. 20, Chandi Prasad Lane, P.O. Bhagalpur, P.S. Kotwali, Dist. Bhagalpur.
10. Town Commissioner, Municipal Corporation, Bhagalpur, P.O. Bhagalpur, P.S. Bhagalpur, Dist. Bhagalpur.

... .. Respondent/s

**Appearance :**

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|--------------------------------|---|------------------------------------------------------------------------------------------------|
| For the Petitioner/s           | : | Mr. Rakesh Kumar Tiwari, Advocate<br>Mr. Ravish Mishra, Advocate<br>Mr. Kulanand Jha, Advocate |
| For the Respondent Nos. 1 & 3: |   | Mrs. Punita Kumari Singh, Advocate                                                             |
| For Respondent Nos. 2 & 4      |   | Mr. Samir Kumar, Advocate                                                                      |
| For the Respondent No.5        | : | Mr. Gautam Kumar Kejriwal, Advocate<br>Mr. Alok Jha, Advocate<br>Mr. Mukund Kumar, Advocate    |
| For the Respondent No. 9       |   | Ms. Pallavi, Advocate                                                                          |
| For the Respondent No.10       |   | Mr. Manish Kumar, Advocate                                                                     |



Mr. Sanjay Parasaran, Advocate

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

**Date : 04-09-2025**

The present civil miscellaneous petition has been preferred for setting aside the order dated 15.02.2023 passed in Title Suit No. 487 of 2021 by the learned Sub Judge-1, Bhagalpur whereby and whereunder the learned trial court rejected the application filed by the plaintiff/petitioner under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

2. The facts of the case, as appearing from the record, are that the petitioner is one of the plaintiffs before the learned trial court and has filed Title Suit No. 487 of 2021 for declaration of title and confirmation of possession with respect to Schedule-1 land of the plaint in favour of the plaintiffs and against the defendants. The suit property is a service lane land situated in Mohalla-Jogsar, Chandi Prasad Lane, Ward No. 20, Thana- Kotwali, District- Bhagalpur, which is attached to the kitchen garden as well as house of the plaintiffs situated and constructed on Plot No. 428, *Khata* No. 553, measuring an area of 7 *katha* 4 *dhur* and leading to the government road in the east. This service lane is said to be 90 feet long and 12 feet wide



covering an area of 1080 sq.feet. One Ram Narayan Tiwary was the common ancestor of the plaintiffs, who purchased, by way of registered sale deed dated 27.10.1944, the property described hereinbefore under Plot No.438 on which the house of the plaintiffs is situated. The suit property is a private *rasta* described as '*gali niz wo waste aamadraft mehtarani*' in the sale deed dated 27.10.1944 and the same has been coming in use as common service lane of the plaintiffs. This property was commonly known as Shiv Jatan Pandey Lane and was sold to Ram Narayan Tiwary by his vendors, who were descendants of Shiv Jatan Pandey, along with their house and land.

3. Further case of the plaintiffs is that service lane looks like a big 'L' an arm of which touches the kitchen garden of the plaintiffs situated back and west of their house and the 2<sup>nd</sup> arm touches the main road passing north to south.

4. Further case of the plaintiffs is that the defendants 1<sup>st</sup> party entered into a contract with defendant no.5, Ratan Kumar Santhaliya, a builder and developer for construction of a multi-storied apartment on their plot lying adjacent south of the house of the plaintiffs. The defendants 1<sup>st</sup> party and defendant no. 5, in collusion, want to dispossess the plaintiffs from their service lane after they started their construction work. The



plaintiffs also claim that the apartment being constructed by defendant no. 5 is in violation of the municipal laws and no space in and around the apartment are left and the plaintiffs are being deprived of their right for easement as well as right to light and fresh air. The defendant no. 5 wants to dig trench on the service lane along with the plot handed over to him by defendants 1<sup>st</sup> party. When the defendants 1<sup>st</sup> party and defendant no. 5 did not pay any heed to the request of the plaintiff no.1, he served a legal notice upon defendant no.5 and also submitted an application before the Town Commissioner, Municipal Corporation, Bhagalpur, but as the Town Commissioner, Bhagalpur Municipal Corporation was hand in glove with the defendant no. 5, no action was taken and, thereafter, the plaintiffs filed the suit seeking a decree for declaration of title and possession on the land of the service lane detailed in Schedule-1 and the plaintiffs also sought restraint order by way of *ad interim* injunction against the defendants on the land of service lane. Further prayer was sought that the defendants 1<sup>st</sup> party and 3<sup>rd</sup> party be directed to follow the provisions as laid down under the Municipal and Building By-laws.

5. The defendants appeared and filed their respective



written statements contesting the claim of the plaintiffs. Before framing of issues, an amendment application has been filed on behalf of the plaintiff/petitioner seeking certain amendments in the plaint and this application was rejected by the learned Sub Judge-1, Bhagalpur, vide order dated 15.02.2023, and this order is subject matter of challenge before this Court.

6. The learned counsel for the petitioner submitted that the order of the learned trial court is perverse and suffers from illegality and irrationality and is vitiated by an apparent error of law. The learned counsel further submitted that the learned trial court erred in not appreciating the law and facts. The learned trial court failed to appreciate that the suit is at the initial stage and issues have not been framed and the amendment was not going to change the nature of suit. The learned trial court further failed to appreciate that the amendment of the plaint is necessary for determination of real issue of the suit. The learned trial court further failed to appreciate that the amendment application has been filed in accordance with the provisions of Order 7 Rule 17 of the Code and the amendment could not be denied to the plaintiff/petitioner on the ground mentioned in the impugned order. The court has observed that the plaintiff did not disclose



anything by which the court can presume that even after due diligence, the plaintiff could not bring the fact on record at the time of filing of the plaint. This is against the provisions of law as requirement of due diligence is necessary only after commencement of trial. Further, the impugned order shows the plaintiffs want to change the area and boundary of the suit land, which will change the entire nature and character of the suit. But it is apparent even from the impugned order that the amendments are not going to change the nature and character of the suit as it is suit for declaration and seeking injunction and is at the initial stage and, for this reason, the impugned order suffers from a number of illegalities.

7. The learned counsel further submitted that necessity arose for amendment of the plaint as the plaintiff/petitioner's *Khesra* No.438 of *Khata* No. 553 has been mentioned in the whole body of the plaint as well as in the boundary except in the Schedule of the plaint where instead of *Khesra* No. 438, it was mentioned as 428, which is evidently a typographical error. Other amendments about enhancement of the suit property has been necessitated as defendants grabbed the land of the plaintiffs and amalgamated it with Plot No.437 and Plot No.436. Further, the area of suit property, i.e., service



lane, was wrongly mentioned as 1080 sq.feet and it is much more than that having regard to the sale deed dated 27.10.1944 in favour of ancestor of the plaintiffs. Further, the service lane extends to *Khesra* No.436 and *Khesra* No. 437. This fact came to the notice of the plaintiffs after the defendants claimed and incorporated the lands of the plaintiffs bearing *Khesra* No.438, *Khata* No.553 into their land of *Khata* No.240, *Khesra* No. 437. Accordingly, the boundary also needs to be amended according to the lands encroached upon by the defendants and in accordance with the boundary of *Khesra* Nos. 436 and 437.

8. Thus, learned counsel submitted that these amendments are not going to change the nature of suit and are necessary for the purpose of determining the real question in controversy between the parties. The amendments have been sought to correct the typographical error and as the defendants have wrongly and forcibly incorporated the land of the plaintiff/petitioner into their land, enhancement of the area of the suit land became necessary.

9. The learned counsel further submitted that instead of challenging the amendment on merits, the defendants raised petty issues like, it is only the petitioner, who has filed the amendment application and other plaintiffs have not verified the



same. However, the Code requires affidavit by one of the plaintiffs to support the amendment application and the same has been done. The learned counsel further submitted that the learned trial court completely relied on the submission of defendants and pre-decided the suit without the issues being framed and evidence being recorded on behalf of the parties. The learned counsel further submitted that the learned trial court in the impugned order relied on the submission of the defendants that one Title Suit No.601 of 2022 has been pending in respect of the same suit land, but this finding is imaginary as no documents have been brought on record to prove this fact and, therefore, this finding is perverse. Title Suit No. 601 of 2022 has no concern with the present Title Suit No.487 of 2021.

10. The learned counsel reiterated that since these amendments have been sought before the commencement of trial and even before the settlement of issues, the same ought to have allowed as the Hon'ble Supreme Court in a number of cases has held that the amendments before the pre-trial stage are to be allowed liberally.

11. The learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Dinesh Goyal v. Suman Agarwal (Bindal) & Ors., 2024 SCC OnLine SC 2615***



wherein in paragraph 14 it has been held that the overarching Rule is that a liberal approach is to be adopted in consideration of application for amendment, while referring to the decision in the case of ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd., 2022 SCC OnLine SC 1128.***

12. The learned counsel submitted that the decision in the case of ***Life Insurance Corporation of India (supra)*** was also considered by the Hon'ble Supreme Court in the case of ***Ganesh Prasad vs. Rajeshwar Prasad and others, 2023 SCC OnLine SC 256*** wherein the Hon'ble Supreme Court held that in the event, if the pleas sought to be introduced by plaintiff by way of an amendment is also the plea, which the defendant has set up in his written statement and such a plea of the plaintiff is an alternative plea, even though it is inconsistent with the original plea, since there is no prejudice caused to the defendant, the Court is not precluded from allowing the amendment, relying on the decision of a three-Judge Bench of the Hon'ble Supreme Court in the case of ***Firm Srinivas Ram Kumar v. Mahabir Prasad, AIR 1951 SC 177.*** It has further been held that the Plaintiffs and Defendant are entitled to amend the plaint, written statement or file an additional written statement, but subject to an exception that by the proposed amendment, an



opposite party should not be subject to injustice and that any admission made in favour of the other party is not withdrawn. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided that the proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised or defence taken.

13. The learned counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***Usha Devi v. Rijwan Ahamd & Ors, (2008) 3 SCC 717*** wherein submission has been taken into consideration that the proviso to the Rule would come into play only after the commencement of trial and the learned trial court was in error in rejecting the application invoking the due diligence clause in the proviso and it has been held that even after framing of issues, if the proposed amendment is necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit and the amendment was allowed.

14. Thus, learned counsel submitted that the



impugned order suffers from a number of illegalities and the same needs to be set aside.

15. The contention of the plaintiff/petitioner has been vehemently opposed by the learned counsels representing the respective defendants/respondents.

16. It has been contended on behalf of respondent nos. 1 & 3 that there is no perversity or illegality in the impugned order. If the amendments were allowed, the same would have caused prejudice to the respondent nos. 1 to 3. Apparently, by way of amendment, the petitioner has been trying to introduce a new case seeking enhancement of the suit land, whereas there is no enhancement of the land of the respondent nos. 1 to 3, who are in possession of their land purchased 90 years ago. No objection was raised by the plaintiffs when construction of building was being made by them on their land. The land of the respondent nos. 1 to 3 was mutated in the name of their father on 14.07.1969. The same area of land is shown even in the rent receipt of the year 2009-2010. The plaintiff/petitioner wants to grab the land of the respondent nos. 1 to 3 and the amendment application, if allowed, would cause serious prejudice to the respondent nos. 1 to 3. Therefore, the amendment application has been rightly



rejected by the learned trial court as the same would give rise to more controversy. The plaintiff/petitioner has filed the amendment petition by enhancing the area of suit land to harass the respondent nos. 1 to 3/defendants 1<sup>st</sup> party and has not come with clean hands. The addition of new point would cause prejudice to the respondents and change the nature and characteristics of the suit land. The learned counsel further submitted that the plaintiffs including the present petitioner have filed the suit on completely wrong averment and even forging/fabricating signatures of other plaintiffs and making further wrong averment that he is *Karta* of the family. Thus, learned counsel submitted that the learned trial court has passed the impugned order in right perspective and it is a reasoned order and the same should be sustained.

17. It has been contended on behalf of the respondent nos. 2 to 4 that the impugned order has been passed on merits by the learned trial court after examining the materials before it and the same requires no interference by this Court. The learned counsel further submitted that the learned trial court has recorded in its finding that the application dated 16.03.2022 for seeking amendment has been filed by only the present petitioner, i.e., the plaintiff no.1 and not by the other plaintiffs.



This shows the petitioner has filed the petition with wrong averment claiming himself to be acting on behalf of the plaintiffs. The learned counsel further submitted that signatures of three plaintiffs, namely plaintiff no.2 Rupa Dubey, plaintiff no.4 Chitra Pandey and plaintiff no.5 Dr. Neel Kishore Tiwary, have been forged on the plaint and the signature of the plaintiff no. 5 was missing from the *vakalatnama*, who subsequently filed an application seeking deletion of his name from the array of the plaintiffs. After the learned trial court directed the appearance of plaintiff nos. 4 & 5 in person, the plaintiff no. 5 filed an affidavit submitting that he was fraudulently impleaded in Title Suit No. 487/2021. A number of such instances came to the notice of the learned trial court and appropriate applications in this regard have been filed by the parties.

18. The learned counsel further submitted that the petitioner wants to change the entire character and nature of the suit property with some hand-drawn sketches and measurement done by privately engaged *Amin*, which is reflected from the application dated 16.03.2022 filed by the petitioner seeking amendment. Therefore, the learned trial court aptly and judiciously rejected the amendment application stating very clearly and succinctly all the flaws in the requested amendment.



The learned counsel further submitted that no reasons have been mentioned for omission on the part of the petitioner in not stating these facts in the main plaint and not incorporating these facts in the plaint from the very beginning. As the petitioner has been having knowledge about these facts from very beginning, the amendment at this later stage could not be allowed and the learned trial court rightly rejected the amendment application of the petitioner.

19. The learned counsel further submitted that the brother of the petitioner and one of the plaintiffs, namely Shyam Kishore Tiwari, has also filed Title Suit No. 601 of 2022, which has exactly the same area of land of Plot No. 438 of *Khata* No. 553. The learned counsel further reiterated that the dispute is to get access to the road and the petitioner has himself encroached upon the land of respondent no.2. When only area of Plot No. 438 is in dispute, making neighboring Plot No. 436 as part of suit land is itself wrong. The learned counsel further submitted that the real fact of the case is that the claimed piece of land is neither stated in the original sale deed of 1944 nor anywhere in the map of Nagar Nigam Survey of 1976-77 till date. The petitioner himself has made criminal trespass over the land of respondent nos. 2 to 4, who sent E-mail to the Hon'ble Chief



Minister of Bihar for taking action against the petitioner for his criminal acts. The learned counsel further submitted that the respondent no. 2 along with his brothers have entered into the agreement with respondent no. 5 for development of plot and construction of multi-storied building (apartment) and the apartment has been constructed. The said premises includes the lands of amendment application and purchasers of flats are also necessary party. The learned counsel further submitted that the petitioner illegally tried to demolish the boundary wall separating *Khesra* Nos. 437 and 436 with an intent to create an unauthorized and illegal passage. This illegal activities of the petitioner was captured in the video recording and the materials were duly submitted before the Hon'ble Chief Minister, Bihar. The local authorities summoned both, the petitioner and mother of the respondent no. 4, for an inquiry scheduled on 20.02.2022. However, the petitioner deliberately chose not to appear before the authorities and evaded participation in the official inquiry.

20. The learned counsel further submitted that in the Nagar Nigam Survey of Bhagalpur conducted in 1976, Plot Nos. 436, 437 and 438 were shown to be distinct in map, and right from that year till date, no interruption from any side has been made till 2024 as the petitioner did not commit any criminal



trespass in property of answering respondent and ad-joining land owner. The learned counsel further submitted that the part of disputed land is also part of properties of the respondents and they have their rightful claim over the same since 1930.

21. The learned counsel referred to the decision of the Hon'ble Supreme Court in the case of *North Eastern Railway Administration v. Bhagwan Das, (2008) 8 SCC 511* on the point that if the amendment is allowed, the answering respondents could not be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in terms of cost.

22. Thus, learned counsel submitted that there is no infirmity in the impugned order and there is no requirement of any interference by this Court.

23. It has been contended on behalf of the respondent no. 5 that the petitioner has filed the present civil miscellaneous petition on misconceived ground challenging the order dated 15.02.2023 passed in Title Suit No. 487 of 2021 by the learned Sub Judge-1, Bhagalpur. The learned counsel for the respondent no. 5, at the outset, submitted that the plaint has been filed by the petitioner committing forgery. One of the plaintiffs, namely



Dr. Neel Kishore Tiwari, objected the filing of the plaint on his behalf. The defendant nos. 2 and 3 challenged the signatures of the plaintiffs on verification-sheet and *vakalatnama*. Dr. Neel Kishore Tiwari filed an application making prayer to strike off his name from the cause title and transpose him in the category of defendant and also for taking action against the plaintiff no.1 under Sections 195 and Section 340 of the Code of Criminal Procedure. Thus, learned counsel submitted that the plaint itself is doubtful and has been filed by playing forgery and when genuineness of plaint is in doubt, amendments sought in such plaint would always be suspect. The learned counsel further submitted that the petitioner has sought to introduce entirely a new facts and fresh cause of action which cannot be allowed by way of amendment as a new suit is required to be filed.

24. The learned counsel further submitted that there is delay in bringing the amendment and such belated prayer should not be allowed and relied on the decision of the Hon'ble Supreme Court in the case of ***Basavaraj vs. Indira & Ors., (2024) 3 SCC 705***, wherein it has been held that the Court should not allow the amendments at belated stages if due diligence has not been shown. In the case of ***Basavaraj*** (supra), the Hon'ble Supreme Court quoted the case of ***M. Revanna vs.***



*Anjanamma* reported in (2019) 4 SCC 332 and held that Order VI Rule 17 of the Code prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The Hon'ble Supreme Court further held that the burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence, such amendment could not be sought earlier. The Hon'ble Supreme Court refused to allow the amendment as it was found that plaintiffs came to know about the factum sought to be incorporated as amendment in the year of filing of their suit and there was no explanation by them as to why they did not file the application for amendment for all these years.

25. The learned counsel further submitted that the prayer of the petitioner seeking amendment in the plaint is hit by the very first requirement of law relating to presence of due diligence on the part of the petitioner while preparation of the plaint before filing of the suit. The learned counsel further submitted that perusal of the amendment application would show that the properties sought to be added to the plaint by completely replacing the original suit property was very much in existence before the petitioner while the plaint of the suit was



originally prepared and filed. It is at all not a new fact. Similarly, the issue of construction which is being objected by the petitioner has been already going on upon the property mentioned in the amendment application well within the knowledge of the petitioner when the suit was originally filed. Therefore, there is an apparent failure of due diligence on the part of the petitioner for filing the original plaint and, therefore, such prayer of the petitioner seeking amendment is completely barred in the eyes of law.

26. The learned counsel further submitted that the amendment to a plaint should change the contents of the plaint without materially affecting the originals facts, issues arising out of such facts and the relief prayed on the basis of such facts. The amendment cannot mean complete replacement of basic structure of the plaint in a suit. By way of amendment, a party to suit cannot fully replace the suit property and accordingly the relief prayed in relation thereto. In the present case, by way of amendment, the petitioner has been seeking to completely replace the suit property, *khata* and *khesra* number, area and boundaries. Hence, prayer of the petitioner is not one of amendment, but change of the whole plaint and the relief prayed for in the suit originally which is not permissible in the eyes of



law.

27. The learned counsel further submitted that moreover, Order 6 Rule 17 of the Code has not been followed by the petitioner in moving the amendment application. The petitioner has not filed verification with reference to number of paragraphs and has not submitted what he verifies of his own knowledge and what is verified from the information received and believed to be true. Further, no affidavit in support of amendment application has been furnished. In this regard, learned counsel relied on the decision of the Division Bench of Madhya Pradesh High Court in the case of ***Rayalseema Constructions and another vs. Deputy Commercial Tax Officer and Ors., 1959 (10) Sales Tax Cases 345.***

28. The learned counsel further referred to the decision of the Hon'ble Supreme Court in the case of ***State of Jharkhand & Ors. vs. Ambay Cements & Anr., 2005 (1) PLJR 239 (SC)*** wherein it has been held that whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be



done, it should be done in the manner prescribed and not in any other way.

29. The learned counsel next referred to the decision of the Hon'ble Supreme Court in the case of ***Meghmala & Ors. vs. G. Narasimha Reddy & Ors., (2010) 8 SCC 383*** wherein the Hon'ble Supreme Court held that the ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the person who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. The Hon'ble Supreme Court further held that an act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction *void ab initio*. The Hon'ble Supreme Court further held that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away.

30. The learned counsel further submitted that similar principle has been reiterated by the Hon'ble Supreme Court in the case of ***Ram Chandra Singh v. Savitri Devi & Ors., (2003) 8 SCC 319***.

31. Thus, learned counsel submitted that rejection of prayer for amendment made by the learned trial court by way of



the impugned order is absolutely just, proper, legal and is fit to be upheld by this Court.

32. It has been contended on behalf of the respondent no.9 that the plaint in this case is not a plaint being a spurious document and the same is not in accordance with Section 26 and Order 4 Rule 1 of the Code. The signature of the answering respondent named as plaintiff no. 5 is forged. Similarly the signatures of sisters of plaintiff no.1/petitioner are also forged and fabricated by the petitioner. The answering respondent has filed an application seeking expunction from the array of the plaintiffs. If the plaint itself is a sham document, no amendment could cure of its initial defects.

33. The learned counsel further submitted that though the name of answering respondent has been deleted from the array of the parties, but he has not been transposed as one of the defendants and the answering respondent has filed an application for review of said order expunging his name from the list of the plaintiffs. The answering respondent is one of the legal heir of Ram Narayan Tiwari and no order can be made in breach of his rights.

34. The learned counsel further submitted that cognizance of fraud played by the plaintiff no.1/petitioner



should be taken into account by the court and appropriate direction be given to the learned trial court for conducting an inquiry under Section 340 of the Cr.P.C.

35. The learned counsel further submitted that even on merits, the impugned order of the learned trial court does not suffer from any infirmity. Allowing the amendment would change the nature of suit and considering the forgery committed by the plaintiff no.1/petitioner, the same has been rightly rejected. Moreover, amendment application is filed without any verification or affidavit. Therefore, the learned trial court has not committed any mistake in allowing the amendment application.

36. The learned counsel appearing on behalf of the respondent no.7 supported the contention of the learned counsel for the petitioner. The learned counsel for the respondent no. 7 submitted that the amendment sought by the plaintiff/petitioner is pre-trial amendment and the same should be liberally allowed and relied on the decision of the Hon'ble Supreme Court in the case of *Sampath Kumar v. Ayyakannu & Anr, (2002) 7 SCC 559* wherein the Hon'ble Supreme Court held that Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after



conclusion thereof.

37. The learned counsel further submitted that the amendment seeks enhancement of area and to correct boundary and correction of typographical error. All these amendments have been sought before framing of issues and, therefore, there is no harm in allowing the amendment having regard to correction in boundary and referred to decision of the Hon'ble Supreme Court in the case of *Sajjan Kumar v. Ram Kishan, (2005) 13 SCC 89* in support of his contention.

38. By way of reply, learned counsel for the petitioner submitted that it has been wrongly submitted that the application was not verified and was not supported with affidavit, the amendment application was properly verified and duly supported with affidavit. Similarly there was no need to continue with the plaintiff no. 5 after his deletion from the array of the parties as no relief has been sought against him and he has no further concern with the subject matter in hand. The learned counsel reiterated that there is no merit in the submission of the contesting respondents to the claim of the petitioner.

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



40. At the outset, the fact which needs to be taken note of is that the amendment has been sought at the initial stage of the suit. After institution of the suit, written statements have been filed by the defendants and, thereafter, the amendment application has been filed. Now, challenge to the amendment application is primarily on the ground that the suit has been filed by the petitioner playing fraud upon the parties as well as on the court. Further, opposition to the amendment is on the ground that no due diligence was shown by the plaintiff no.1/petitioner in not bringing the amendment at the time of filing of the plaint though he was having knowledge all along till the filing of the plaint. Third objection raised by the contesting respondents is that the amendment would change the nature of the suit property as the petitioner has sought enhancement of the suit property while changing the boundary of the suit land. I will take up all these points one by one.

41. So far as the claim of the contesting respondents about the petitioner playing fraud upon the parties and on the court is concerned, the contesting respondents are at liberty to take the matter before the learned trial court and it appears from the record that some applications have been filed in respect of purported fraud committed by the petitioner. The learned trial



court is fully competent to consider the issue of fraud raised by the contesting respondents and pass appropriate orders. Moreover, the said issue is not relevant for the purpose of disposal of the amendment application unless an unequivocal finding is recorded against the petitioner.

42. So far as the contention of the contesting respondents about the petitioner having knowledge of the facts sought to be bring on record through the amendment, the law as provided under Order 6 Rule 17 of the Code does not mandate the petitioner to show due diligence even when the trial has not commenced. Rather law has been settled by the Hon'ble Supreme Court in a catena of decisions that pre-trial amendments are to be allowed liberally. In the case of ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil & Ors***, AIR 1957 SC 363, the Hon'ble Supreme Court has observed "...We think that the correct principles were enunciated by Batchelor, J. in his judgment in the same case viz. *Kisandas Rupchand case* [(1920) LR 47 IA 255] when he said at pp. 649-650: "All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties ..."

43. Further, the Hon'ble Supreme Court in the case



of *M/s. Revajeetu Builders & Developers Vs M/s. Narayanaswamy & Sons & Ors, (2009) 10 SCC 84*, has formulated basic principles in Para-63 for allowing or rejecting the application for amendment which reads as under:-

*“63. On critically analyzing 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 sought 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.”*

(emphasis supplied)

44. In the present case, it cannot be said that the amendments are malafide and would cause injustice to the contesting respondents. The suit is at a primary stage and if the amendments are allowed, the contesting respondents



/respondents can always file their additional written statement. Therefore, the submission of learned counsels for the contesting respondents on this point is without merit and the amendments cannot be objected on this ground.

45. So far as the contention of the learned counsel for the contesting respondents about the merits of the amendment is concerned, the Hon'ble Supreme Court has held that the merit of the amendment is not a relevant consideration for allowing the prayer of amendment. The Hon'ble Supreme Court in the case of ***Rajesh Kumar Aggarwal v. K.K. Modi***, reported in **(2006) 4 SCC 385** has held in Paragraphs-18 & 19 as under:

*“18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of*



*amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.*

*19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”*

46. Further, the Hon’ble Supreme Court in case of ***Andhra Bank Vs. Abn Amro Bank N.V. & Ors.***, reported in ***AIR 2007 SC 2511*** has held that while allowing an application for amendment of the pleadings, the Court cannot go into the question of merit of such amendment. The only question at the time of considering the amendment of the pleadings would be whether such amendment would be necessary for decision of the real controversy between the parties in the suit.

47. Much argument has been advanced on behalf of the contesting respondents challenging the merits of the amendment, but in the light of law settled by the Hon’ble Supreme Court, objection on this point is completely misplaced.

48. Another issue raised by the contesting respondents is that the amendments would completely change the nature of



the suit and have been introducing completely new facts. This submission is also without any merits. The suit has been filed for declaration of title over the suit property and even after the amendment, there is going no change in the nature of the suit.

49. So far as the change of suit property or boundary is concerned, no new relief has been sought and only the nature of the suit property would be changed to some extent, but it is not the fact that there would be complete overhauling of the plaint. When the suit is at its initial stage and the contesting respondents/respondents have all the opportunities available to rebut the contention of the plaintiff/petitioner by filing their additional written statement, no prejudice would cause to the contesting respondents if the amendment is allowed.

50. Moreover, the reasons given by the learned trial court in refusing the amendment does not hold water. Reliance by the learned trial court on due diligence aspect is completely misplaced. Similarly, filing of the another suit and considering the merits of the amendment at this stage makes the impugned order look completely bad and erroneous exercise of jurisdiction.

51. Further, it is also to be clarified that so far as infirmity in amendment application with regard to not following



the proper procedure is concerned, the same being objection on technicalities, the same should not come in the way of allowing or rejecting the application once the learned trial court has passed an order and did not express its opinion on such infirmities and did not direct the parties to take steps for curing the same.

52. In the light of the discussion made here-in-before, the authorities cited by the learned counsels for the respondents could not be of any help.

53. Therefore, having regard to the aforesaid discussion, I am of the considered opinion that the learned trial court did not exercise its jurisdiction in proper manner and passed an order which cannot be sustained. Hence, the impugned order dated 15.02.2023 passed in Title Suit No. 487 of 2021 by the learned Sub Judge-1, Bhagalpur is set aside and consequently, the application dated 16.03.2022 filed by the plaintiff/petitioner under Order 6 Rule 17 of the Code is allowed.

54. However, the defendants would be given ample opportunity to rebut/controvert the amendment in the plaint by allowing defendants to file amended/additional written statement.



55. Accordingly, the present petition stands allowed.

56. Pending interlocutory application, if any, also stands disposed of.

**(Arun Kumar Jha, J)**

V.K.Pandey/-

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