

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.472 of 2024

Navneet Prasad S/o Late Brij Mohan Prasad Resident of Station Chowk,
Forbesganj, Ward No.- 11, P.S.- Forbesganj, District- Araria.

... .. Petitioner/s

Versus

1. Rameshwar Saha @ Tuntun Babu S/o Late Girdhari Prasad Resident of Vill.-
Forbesganj, Ward No.- 11, P.S.- Forbesganj, District- Araria.
2. Mira Devi, W/o- Late Brij Mohan Prasad Resident of Station Chowk,
Forbesganj, Ward No.- 11, P.S.- Forbesganj, District- Araria.
3. Baruna Jaiswal, D/o- Late Brij Mohan Prasad, W/o Sanjay Kumar Jaiswal
Resident of Station Chowk, Forbesganj, Ward No.- 11, P.S.- Forbesganj,
District- Araria.
4. Sweta Bhagat, D/o Late Brij Mohan Prasad, W/o Raj Kumar Bhagat
Resident of Station Chowk, Forbesganj, Ward No.- 11, P.S.- Forbesganj,
District- Araria.
5. Priyanka Kumari, W/o- Dilip Prasad Resident of Station Chowk,
Forbesganj, Ward No.- 11, P.S.- Forbesganj, District- Araria.
6. Babli Sah, W/o- Upendra Sah Resident of Station Chowk, Forbesganj, Ward
No.- 11, P.S.- Forbesganj, District- Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Vijay Shanker Tiwari, Advocate Ms. Abhilasha Jha, Advocate
For the Respondent/s	:	Mr.Yogendra Mishra, Advocate Ms.Swati Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 18-07-2025

The present civil miscellaneous petition has been filed for setting aside the order dated 01.02.2024 passed by the learned Munsif, Forbesganj, Araria in Title Suit No. 147 of 2008 whereby and whereunder the petition dated 10.11.2022 filed on behalf of the plaintiffs for amendment in the plaint has been rejected.

02. Briefly stated, facts of the case as it appears from the record are that the petitioner is one of the plaintiffs before



the learned trial court and the original plaintiff who was father of the petitioner, filed Title Partition Suit No. 147 of 2008 against the defendants/respondent no. 1 for partition of their ancestral land. After issuance of summons, the defendants/respondent no. 1 appeared and contested the suit filing their written statement. The plaintiffs/petitioner filed a petition under Order VI Rule 17 of the Code of Civil Procedure (in short "the Code"). The rejoinder was filed by the defendants/respondent no. 1 with prayer to reject the amendment application. The learned trial court after hearing the parties, rejected the application filed for amendment in the plaint vide order dated 01.02.2024 which is under challenge before this Court.

03. Learned counsel for the petitioner submits that the order of the learned trial court has been passed without appreciation of facts and law and such order could not be sustained. The learned trial court has not considered the fact that the proposed amendments are necessary for adjudication of the suit and are formal in nature and would not change the nature of the suit. Learned counsel further submitted that the petitioner was not having knowledge of the entire facts and only when the written statement was filed by the defendants/respondent no. 1,



the plaintiff/petitioner came to know about the existence of Memorandum of Partition and moved before the learned trial court for amendment of the plaintiff. Learned counsel further submitted that the petitioner is one of the plaintiffs and the suit is for partition of ancestral property. The defendant/respondent no. 2, by filing written statement, claimed that a partition has already taken place in the family and the same was reduced to writing and the original plaintiff also put his signature. Though the plaintiff has stated about defendant/respondent no. 1 taking signature of the plaintiff and defendant no. 1 on some blank paper, due to lack of knowledge, it has not been mentioned that those signed papers were used in preparation of Memorandum of Partition. Learned counsel further submitted that though the amendment has been sought after commencement of trial, the proviso to Order VI Rule 17 would not put any embargo, given the facts and circumstances of the case. The amendment has been sought to explain the facts and is clarificatory in nature furnishing particulars in connection with paragraph 4 of the plaint where the foundation has already been laid. Learned counsel referred to the case of ***Dinesh Goyal @ Pappu Vs. Suman Agarwal (Bindal) & Ors.*** Neutral Citation No. ***2024 INSC 726***, wherein the Hon'ble Supreme Court allowed the



amendment after commencement of trial finding it necessary to decide all issues. The learned counsel next referred to the decision of *Krishna Kant Prasad Vs. Sudheshwar Yadav* reported in *2024 (1) BLJ 77* wherein the learned Coordinate Bench of this Court, relying on the decision of *Mohinder Kumar Mehra Vs. Roop Rani Mehar & Ors.* reported in *(2018) 2 SCC 132* and also on *Pankaja and Anr. Vs. Yellappa (D) by L.R.s and Ors.* reported in *AIR 2004 SC 4102* observed that plaintiffs evidence shows that although all those proposed amendments have already been incorporated in the affidavits of their examination in chief, on which the witnesses have even been cross-examined at length by the defendants and no new facts are being introduced by way of amendments. The learned Co-ordinate Bench upheld the order of the learned trial court which held that amendments were purely explanatory in nature, bereft of any new facts. Thus, learned counsel submitted that the impugned order is not sustainable and the same be set aside and the amendment sought by the plaintiffs/petitioner may be allowed.

04. Learned counsel for the respondent no. 1, at the outset, submitted that the impugned order does not suffer from any infirmity and the present civil miscellaneous petition is



without any merits. The learned counsel further submitted that when the defendants/respondent no. 1 appeared after service of summons, he filed his written statement, *inter alia*, submitting in paragraph no. 14 that partition had already taken place and Memorandum of Partition had been prepared on 14.05.1996 and the parties had voluntarily signed after understanding the contents of the Memorandum of Partition. This defendant further filed counter claim which was allowed. Issues were framed and trial proceeded and from 18.01.2011 till 19.05.2011, three prosecution witnesses were examined. The plaintiff failed to examine any other witness and therefore the evidence of the plaintiff was closed vide order dated 07.03.2014. The original plaintiff, Brijmohan Prasad filed a petition to allow the prayer of the plaintiffs to lead further evidence. But the plaintiff failed to adduce further evidence despite a number of adjournments granted for the said purpose. The learned counsel further submitted that the original plaintiff died on 30.01.2020 and the present petitioner and other heirs/legal representatives were substituted in his place who are also respondents in the present case. Even the substituted heirs did not examine any witness and subsequently, filed a petition for amendment in the plaint bringing new facts relating to Panchnama in the plaint. But the



present petitioner who has been substituted in the case, stepped into the shoes of the original plaintiff and was required to proceed from where the original plaintiff left. Instead he filed the amendment application which is barred under proviso to Order VI Rule 17 of the Code. Learned counsel further submitted that as the plaintiffs/petitioner are in possession of the suit property and they want to delay the matter and for this reason the petition for amendment introducing altogether new case contrary to the earlier pleading has been filed by the substituted heirs/present petitioner. Learned counsel further submitted that even earlier on 30.06.2022, the present petitioner filed a petition for amendment in the plaint which was objected to by the answering respondent. The present petitioner did not press this petition for amendment and the said petition was dismissed as not pressed by order dated 14.09.2022. The application for amendment was filed on 10.11.2022 whereas the written statement was filed on 03.02.2010. The petitioner has failed to explain the delay of almost twelve years in filing the amendment application. Learned counsel further submitted that as the petition filed earlier by the petitioner seeking amendment was dismissed as not pressed and no liberty was sought for filing a fresh application, the present amendment application



filed by the petitioner is hit by principles of *res judicata*. Learned counsel further submitted that the petition filed earlier contained the same averment and without assigning any reasons, the same was not pressed and then exactly similar/same application for amendment was filed by the plaintiff/petitioner. Even if it was dismissed as not pressed constructive *res judicata* would apply and as there was no liberty for filing any fresh application, the present petition is barred. Learned counsel further submitted that the application for amendment has been filed making wrong averment. The plaintiff/petitioner claimed that he was not having knowledge about the proposed amendment at the time of filing of the suit but once the plaintiff was made aware of the facts by filing of written statement, bringing amendment after twelve years could not be allowed. Further, the plaintiff by way of amendment wants to change the suit of partition to a suit for declaration against the Panchnama (Memorandum of Partition) which in itself is time barred. Thus the learned counsel submitted that the amendment sought for by the petitioner is highly belated and prohibited under Order VI Rule 17 proviso and as no due diligence has been shown, the learned trial court rightly disallowed the amendment.

05. Learned counsel, referred to the case of ***Basavaraj***



Vs. Indira and Ors. Neutral Citation No. **2024 INSC 151** wherein referring to ***M. Revanna Vs. Anjanamma(Dead) by Lrs and Ors.*** reported in **(2019) 4 SCC 332**, Hon'ble Supreme Court has held that Order VI Rule 17 C.P.C. 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 and the burden is on the parties seeking amendment. It is not a matter of right.

The Hon'ble Supreme Court noted that initially the suit was filed for partition and separate possession and by way of amendment, relief of declaration of the compromise decree being null and void was also sought. In these circumstances, the Hon'ble Supreme Court held that the same would certainly change the nature of the suit, which might be impermissible. The Hon'ble Supreme Court also referred to the case of ***Revajeetu Builders and Developer Vs. Narayanaswamy and Sons and Ors.*** reported in **(2009) 10 SCC 84** wherein the factors to be taken into consideration by the Court while dealing with an application for amendment have been discussed. One of the important factors was as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended



claim would be barred on the date of filing the application.

The learned counsel next referred to the decision in the case of ***State of Orissa & Anr. Vs. Laxmi Narayan Das (Dead)*** in ***Civil Appeal No. 8072 of 2010*** on the point that the petitioner is guilty and concealing material facts from the Court as he has not mentioned about his earlier application which was dismissed as not pressed. The learned Supreme Court applying the principles of constructive *res judicata* held that writ petition filed by the respondents after withdrawal of civil suit was not maintainable as no liberty was granted. In the writ petition there was no mention about filing of civil suit earlier for the same relief and withdrawal thereof and the Hon'ble Supreme Court held that a litigant can be non-suited in case he is found guilty of concealing material facts from the Court or mis-stating the same. Thus learned counsel submitted that even on this ground the subsequent amendment application of the plaintiff was not maintainable.

Learned counsel further referred to the case of ***M/S. M.J. Exporters Pvt. Ltd. Vs. Union of India*** reported in ***(2021) 13 SCC 543*** on the proposition that when the issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive *res judicata* which is



laid down under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and the said principles are extendable to writ proceedings as well, would be applicable. Learned counsel thus submitted that the suit is being delayed by the plaintiffs/petitioner and after the year 2011, the plaintiffs/petitioner has stopped taking any steps in the suit for examination of witnesses. The present plaintiff is in possession of the entire property and for this reason he has been delaying the disposal of the suit. Thus, learned counsel submitted that there has been no irregularity or illegality in the order passed by learned trial court and the present civil miscellaneous petition is liable to be dismissed.

06. Learned counsel appearing on behalf of the petitioner, by way of reply, submitted that since the earlier application for amendment was dismissed as not pressed and it was not decided on merits, the principles of *res judicata* would not be applicable. Learned counsel referred to ***Dinesh Goyal @ Pappu*** (supra) wherein also the earlier petition filed for amendment was withdrawn and a fresh application was filed and the Hon'ble Supreme Court allowed the amendment application upholding the order of the High Court. Learned counsel further submitted that moreover for determination of



real controversy between the parties, the amendment application can be allowed at any stage and the Courts power is not curtailed by the proviso to Order VI Rule 17 of the Code.

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

08. Order VI Rule 17 of the Code provides 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”.

The aforesaid provision makes it amply clear that pre-trial amendments could be allowed liberally. But once trial has commenced, the amendment could be allowed only if the party seeking the amendment could show that despite due diligence, he could not have sought the amendment earlier and prior to the commencement of trial. The Hon’ble Supreme Court in paragraph 9, 10 and 11 in the case of **Basavaraj** (supra) has



clarified the issue :-

“9. This Court in [M. Revanna v. Anjanamma \(Dead\)](#) by legal representatives and others opined that an application for amendment may be rejected if it seeks to introduce totally different, new and inconsistent case or changes the fundamental character of the suit. [Order VI Rule 17 C.P.C.](#) 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 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. It is not a matter of right. Paragraph No. 7 thereof is extracted below:

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to [Order 6 Rule 17 CPC](#) virtually prevents an application for amendment of pleadings from being 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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration



whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

(emphasis supplied)

10. Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible.

11. This Court in Revajeetu’s case (supra) enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.”

09. The facts of the present case are somewhat similar to the aforesaid case. Here also suit has been filed for partition and by way of amendment the Memorandum of Partition(Panchnama) dated 14.05.1996 is being sought to be challenged. The said Panchnama has become time barred considering the knowledge of the plaintiff/petitioner. The written statement has been filed in the year 2009 and thereafter, for more than 12 years the plaintiff/petitioner did not take any steps to challenge the said document. The three Judge Bench of



the Hon'ble Supreme Court, in the case of *T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board, (2004) 3 SCC 392* wherein referring to the decision in the case of *L.J. Leach & Co. Ltd. V. Jardine Skinner & Co., AIR 1957 SC 357*, has held that a time barred claim cannot be allowed by way of amendment. This position of law has again been reiterated in the case of *Life Insurance Corporation of India Vs. Sanjeev Builder (P) Ltd.*, reported in *2022 SCC OnLine SC 1128*. In the case at hand, the petitioner is seeking to introduce a time barred claim by way of amendment and the same is not permissible.

Then, there is the issue of two successive application for amendment. It is surprising that an application seeking same amendment was filed earlier and was dismissed as not pressed and exactly similar application has been filed without mentioning about the earlier application or the reasons for withdrawal of earlier application and filing of the subsequent application. Therefore, the contention of the learned counsel for the petitioner that the first application was not disposed of on merits is not significant. If no liberty was sought and the same application was filed within short span of time, the petitioner is duty bound to explain the filing of subsequent application, a duty in which the petitioner has utterly failed.



10. In the light of discussion made hereinbefore, I am of the view that the authorities cited by the learned counsel for the petitioner are not of much help as the facts of the case are quite distinguishable and the ratio could not be applied in the facts of the present case.

11. Though the learned trial court did not consider the matter in the light of such reasoning and went on to reject the amendment application on entirely different grounds which could not be said to be appealing, yet the end result is the same. Hence, the impugned order should now be considered to be supplanted with the reasons by this Court and finding no error of jurisdiction, the impugned order dated 01.02.2024 is affirmed.

12. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
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