

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.781 of 2019

1. Desh Bikul @ Bikul Paswan Son of Raghu Nandan Paswan Resident of Village-Lakshmipur (Bariarpur), P.S.-Piri Bazar, P.O.-Lasghani District-Lakhisarai, Pin Code-81112.
2. Ramdeo Prasad Son of Raghu Nandan Paswn Resident of Village-Lakshmipur (Bariarpur), P.S.-Piri Bazar, P.O.-Lasghani District-Lakhisarai, Pin Code-81112.
3. Binay Kumar son of Raghu Nandan Paswan Resident of Village-Lakshmipur (Bariarpur), P.S.-Piri Bazar, P.O.-Lasghani District-Lakhisarai, Pin Code-81112.
4. Ashok Kumar S/o Late Azablal Paswan Resident of Village-Lakshmipur (Bariarpur), P.S.-Piri Bazar, P.O.-Lasghani District-Lakhisarai, Pin Code-81112.

... .. Petitioner/s

Versus

1. Hari Paswan S/o Late Hazquari Dusadh Resident of Village-Lakshmipur (Bariarpur), P.O.-Lasghani P.S.-Biri Bazar, District-Lakhisarai, pin-Code-811112.
2. Kapildeo Kumar S/o Late Hazquari Dusadh Resident of Village-Lakshmipur (Bariarpur), P.O.-Losghani P.S.-Biri Bazar, District-Lakhisarai, pin-Code-811112.
3. Lagandeo Paswan S/o Late Hazquari Dusadh Resident of Village-Lakshmipur (Bariarpur), P.O.-Lasghani P.S.-Biri Bazar, District-Lakhisarai, pin-Code-811112.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. R.K.P. Singh, Advocate Mr. Bal Bhushan Choudhary, Advocate Mr. Rajkishor Prasad, Advocate Ms. Minakshi Kumari, Advocate Mr. Munna Raj, Advocate Mr. Manish Kumar, Advocate
For the Respondent/s	:	Mr. Satyendra Narayan Singh Mr. Dinkar Raj Bhandari, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA



CAV JUDGMENT

Date : 06-05-2025

The instant petition is directed against the order dated 29.08.2018 passed by learned Sub-Judge I, Lakhisarai in Title Suit No. 101 of 2012, whereby and whereunder the learned trial court allowed the application dated 04.01.2016 filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter as 'the Code') filed by the plaintiffs/respondents.

2. Briefly stated, the facts of the present case are that the plaintiffs/respondents filed Title Suit No. 101 of 2012 in the court of learned Sub-Judge I, Lakhisarai against the defendants/petitioners seeking following reliefs:-

“A. It be declared that the entire land of Khata No. 56 belongs to the Plaintiffs.

B. A decree for recovery of possession of the portion of plot no. 199 as described in schedule II be passed.

C. Cost of the suit be awarded.

D. Any other relief or reliefs be awarded.”

3. The aforesaid reliefs have been sought by the plaintiffs in respect of the land as described in Schedules of the plaint. It further transpires that subject matter of the suit is presently a house and land in occupation of the



defendants/petitioners is fully described in Schedule-II of the plaint and the same is the suit property. During Cadastral Survey Operation, Khata No. 56, Plot No. 199, area 60 decimals stood recorded in the name of Bakhori Dusadh, the common ancestor of the plaintiffs. Bakhori Dusadh was very generous man and he gave shelter to the grandfather of defendant 1st party namely Hito Dusadh who had come from far away and who requested Bakhori Dusadh to provide him employment and shelter in the Zamindari of Ex-landlord. Hito Dusadh was given accommodation over a portion of suit land by constructing a small mud built house in the year 1950-51. Later on, in the year 1990-91 the plaintiffs constructed pucca building after demolishing the old construction and allowed defendant 1st set to live in the suit premises out of generosity. Similarly, defendant 2nd set Azablal Paswan also approached for shelter and he too was accommodated on the recommendation of defendant 1st set. Subsequently, defendant 1st set started claiming right, title and possession over portion of suit land while they were in permissive possession. Similarly, defendant 2nd set also claimed portion of the suit property in which they were permissive possession. Defendant 1st set filed an application before the Anchal



Adhikari, Suryagarha for demarcation of area of Plot No. 199 and defendant 2nd set also filed a case for demarcation and removal of encroachment before the Anchal Adhikari, Suryagarha in which they disclosed for the first time that they are the owners of the land. The defendant 1st and 2nd set, both in collusion, got reported that the entire area of 60 decimals was in possession of Hito Paswan, Azablal Paswan and Borhan Paswan. The defendant 2nd set also disclosed that Mahadeo Paswan and Raghu Nandan Paswan allegedly sold an area of 5 decimals of Plot No. 199 in the year 1959 in favour of Azablal Paswan claiming that Khata No. 56, Plot No. 199 belong to them. The plaintiffs came to know about claim of defendant 2nd party after they obtained certified copy on 19.06.2012 and learnt about the fraud committed by the defendants. In short this is the case of the plaintiffs/respondents.

4. The defendants/petitioners appeared in the said suit after service of summons and filed their written statement admitting that the suit land was recorded in cadastral survey khatian in the name of Bakhori Dusadh Son of Jhakuri Dusadh but the defendants denied the claim that Jhakhuri Dusadh and Bakhori Dusadh provided accommodation to



Hito Paswan over a portion of suit land by constructing a small mud built house in the year 1950-51. They also denied that later on, in the year 1991 plaintiffs constructed pucca building after demolishing the old construction and allowed the defendants 1st set to live in out of generosity. Further case of the defendants is that Bauli Dusadh and Shyam Dusadh, ancestors of defendants 1st set, were recorded tenants in cadastral survey of Khata No. 53, Khesra No. 193, area 5 decimals and the said land was hardly 150 yards away from the suit land. The defendants claimed that the ancestors of the defendants were permanent residents of the village and were not the outsiders. The defendants denied the claim of the plaintiffs that defendant 1st and 2nd set were in permissive possession over the suit land. One of the defendants filed a petition for demarcation of the suit land before the Anchal Adhikari, Suryagarha in which Halka Karamchari found the possession of defendants 1st and 2nd set over 47 decimals and 6 decimals of land, respectively. After being satisfied with the report of the Halka Karamchari, the Anchal Adhikari passed order for measuring the suit land on 02.06.2012 vide Case No. 2/2012-13 and fixed 08.06.2012 for measurement. But the plaintiffs filed an objection petition before the Anchal



Adhikari that the suit land belong to them. Then the defendants approached Anchal Adhikari with relevant paper and got fixed another date for measurement. But this time L.R.D.C., Lakhisarai stayed the measurement proceeding and the defendants appeared before the L.R.D.C., Lakhisarai, who, after hearing and perusing the documents and being satisfied with the defendants paper, directed Anchal Adhikari to proceed with measurement proceeding . The Anchal Amin came with two Chowkidars to ensure peaceful measurement. But the plaintiffs and their men took the law in their hands and forbade the Amin from measuring the land. The matter was reported by the Chowkidars to the Thana. The defendants further claimed that the sale deed of the year 1959 was within the knowledge of the plaintiffs and their ancestors and as such the plaintiffs are not entitled to challenge the sale deed of the year 1959 and averments made in the plaint have been denied. Further averment has been made in the written statement that in course of time, the suit land was auction sold and it was purchased by the Ex-landlord who settled 53 decimals of suit land in the name of Hito Paswan by issuing rent receipts. Hito Paswan came in possession and remained in possession over the same on payment of rent to the Ex-landlord. After vesting



of Zamindari, the Ex-landlord submitted Jamabandi return in the name of Hito Paswan and accordingly, Register-II was prepared vide Jamabandi No. 53 in the government records. So Hito Paswan remained in legal possession on payment of rent to the Ex-landlord before vesting and to the State Government after vesting up to 2012-13. Rent receipts for remaining 7 decimals was issued in the name of defendants 3rd set. Mahadeo Paswan and Raghunandan Paswan sold 5 decimals of land by virtue of registered sale deed dated 28.06.1950 to Azablal Paswan, defendant 2nd set. Later on, Deshbikul Paswan, Son of late Mahadeo Paswan and his minor son Abhay Kumar also sold one decimal land to Azablal Paswan by virtue of registered sale deed dated 27.04.1992 and the land sold to Azablal Paswan was described in Schedule-II. After the aforesaid purchase the defendant Azablal Paswan came in possession and remained in possession over the purchased land. Further the land came into possession of the defendants by virtue of sale by land owner vide registered sale deed dated 28.10.1953 and 25.05.1954 in which western boundary has been admitted in possession of Hito Paswan. Thus, the defendants claimed that the defendants acquired right and tile over the suit land by



virtue of inheritance/survivorship and they are in continuous possession of the same. The defendants have their houses over the suit land and they are living in the same. The defendants lastly contended that the plaintiffs or their ancestors had/have no concern whatsoever, either with the ownership or possession of the suit land.

5. During the pendency of the suit, the plaintiffs filed petition for amendment of plaint on 04.01.2016 and the defendants filed their objection on 08.03.2016 the learned trial court, after hearing the parties, vide order dated 29.08.2018 allowed the amendment in the plaint on petition filed by the plaintiffs. The said order is under challenge before this Court.

6. Learned counsel for the petitioners submitted that the impugned order is improper and not correct and needs to be set aside. The plaintiffs/respondents are not interested in disposal of Title Suit No. 101 of 2012 and towards this end, they are filing interlocutory petitions. Earlier also they had filed an amendment petition. The petitioner nos. 1 and 2 are retired government servant and are senior citizens. The learned trial court overlooked this fact. The petitioner no. 3 is a junior member in the family and he all along resides in



village. The petitioners are interested in disposal of the suit as early as possible. Learned counsel further submitted that the impugned order is quite erroneous and has been passed on surmises and conjectures. The learned trial court committed grave error in allowing the petition of the plaintiffs. The proposed amendments are prejudicial to the interest of the petitioners and if allowed to stand there shall be irreparable loss and injury to the petitioners. From the facts of the case it is apparent that the amendments are unwarranted under the law and on factual grounds. The learned trial court ought to have considered that by allowing the amendment, nature of the suit and cause of action and facts of the case would change. The amendment is prejudicial to the interest of the defendants as amendment has been sought to defeat or demolish the defence of the defendants which should not be permitted. Learned counsel further submitted that the new and inconsistent plea are being set up by way of amendment which has been erroneously allowed. Learned counsel further submitted that since issues have been framed, the learned trial court ought to have considered that the plaintiffs were required to satisfy the court in order to meet the objection under proviso to Order 6 Rule 17 of the Code. The plaintiffs



were required to show that despite due diligence they could not have brought the amendment earlier in time. Learned counsel further submitted that the new and inconsistent facts are being set up by the amendment sought by the plaintiffs and the plaintiffs want to overhaul the plaint and the same is not permissible. Learned counsel further submitted that the impugned order does not provide any reasons for allowing the amendment. By moving amendment application the plaintiffs introduced inconsistent facts, new facts and new relief and the time barred relief has been sought to be introduced.

7. Learned counsel further reiterated that overhauling of plaint is not permitted and relied on a decision of this Court in the case of ***Ram Aadhar Upadhyay and others Vs. Ram Naresh Upadhyay***, reported in ***1968 BLJR 236***, wherein new parties were sought to be added and new dispute included and new reliefs were claimed indicating that claim in the previous suit had been sought to be eclipsed by the new allegations made in the amendment of plaint and this Court held that this was not amendment but overhauling of the plaint. Learned counsel next referred to a decision of Hon'ble Supreme Court in the case of ***Ajendraprasadji N. Pande Vs. Swami Keshavprakashdasji N. and others***,



reported in *AIR 2007 SC 806*, wherein the Hon'ble Supreme Court considered the delay in making the amendment and that no grounds made to show that despite due diligence matter could not be raised earlier whereas facts have been showing otherwise and the Hon'ble Supreme Court held that granting amendment at such stage would cause serious prejudice to the plaintiff and more so when amendments sought tried to introduce new and totally inconsistent facts. Learned counsel further submitted that in the aforesaid decision it was also taken note of by Hon'ble Supreme Court that no unequivocal averment was made as to due diligence and the averment made stands satisfied in view of Order 6 Rule 17 of the Code and the Hon'ble Supreme Court further held that without giving the particulars which would satisfy the requirement of law that the matters now sought to be introduced by the amendment could not have been raised earlier in respect of due diligence. The Hon'ble Supreme Court referred to a decision in the case *Kailash Vs. Nanhku & Ors.*, reported in *AIR 2005 SCW 2346*, wherein it has been held that the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence.

8. Learned counsel for the petitioners next



referred to a Constitution Bench decision of the Hon'ble Supreme Court in the case of ***the Municipal Corporation of Greater Bombay Vs. Lala Pancham and others***, reported in ***AIR 1965 SC 1008***, wherein the Hon'ble Supreme Court in paragraph 8 held that as the plaintiffs were making out a case of fraud for which there is not the slightest basis in the plaint as it originally stood and merely use of the word mala fide in the plaint cannot afford any basis for permitting an amendment. The party should not be allowed to make out a new case by way of an amendment in the plaint. Learned counsel further referred to a decision of Hon'ble Supreme Court in the case of ***Muni Lal Vs. The Oriental Fire & General Insurance Company Ltd. and another***, reported in ***AIR 1996 Supreme Court 642***, wherein the Hon'ble Supreme Court did not allow the amendment in the plaint as the relief in question was barred by time during pendency of the proceeding. On similar point learned counsel referred to decision of Hon'ble Supreme Court in the case of ***Revajetu Builders and Developers Vs. Narayanaswamy and Sons and others***, reported in ***(2009) 10 Supreme Court Cases 84***, wherein a number of guidelines were laid down by the Hon'ble Supreme Court for consideration while dealing with



the application for amendment whether amendment sought is imperative for proper and effective adjudication of the case and it has further held that the court should decline amendments if a fresh suit on the amended claim would be barred by limitation on the date of application. Again the case of ***K. Raheja Constructions Ltd. Vs. Alliance Ministries and others***, reported in ***AIR 1995 Supreme Court 1768***, the Hon'ble Supreme Court refused to allow the amendment incorporating the relief of specific performance of contract after lapse of seven years being barred by limitation. Another decision referred by the learned counsel for the petitioners in the case of ***Radhika Devi Vs. Bajrangi Singh and others***, reported in ***AIR 1996 Supreme Court 2358***, wherein the Hon'ble Supreme Court held that where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. Learned counsel also referred to a decision of ***Gurdial Singh and others Vs. Raj Kumar Aneja and others***, reported in ***(2002) 2 SCC 445***, wherein the Hon'ble Supreme Court made its observation about the practice in subordinate courts in entertaining and dealing with applications for amendment of pleadings and



observed that it is a disturbing feature and if such practice continues, it is likely to thwart the course of justice and held that vague amendment should not be allowed. Learned counsel further reiterated that no reasons have been given in the impugned order and the same goes against the observations made by a learned Single Judge of this Court in the case of *Shashi Bhushan Kumar & Ors. Vs. Ravi Bhushan Prasad*, reported in *2019(4) PLJR 127*, wherein it has been held that an order without reason causes prejudice to the person against whom it is passed. Recording of reason is an essential feature of all judicial orders. Absence of reason in the order deprives the superior court to know as to what prevailed in the mind of the court while passing the order.

9. On the strength of aforesaid decisions, the learned counsel for the petitioners submitted that the impugned order could not be sustained and the same needs to be set aside.

10. Countering the argument of the learned counsel for the petitioners, learned counsel for the respondents vehemently contended that there is no infirmity in the impugned order requiring interference by this Court. Learned counsel further submitted that the amendments



sought by the plaintiffs are explanatory and formal in nature and do not change the nature of the suit. Learned counsel further submitted that the earlier the plaintiffs were not having knowledge about two sham and collusive sale deeds dated 28.06.1959 and 27.04.1992 and as these sale deeds are sham transactions, the plaintiffs sought the sale deeds to be declared as void and inoperative and not binding upon the plaintiffs. Earlier the same could not be incorporated in the plaint in so many words and therefore, the instant amendment petition is way of clarification for the purpose of determination of real controversy between the parties. The trial is still at the initial stages and evidence of the plaintiffs have not started. Learned counsel further submitted that no new facts have been introduced and nature of the suit is not being changed. Therefore, there is no defect in the order passed by the learned trial court. Learned counsel further submitted that the plaintiffs have already paid *ad valorem* court fee but due to mistake of learned counsel, the relief and other facts which were completely explanatory in nature could not be incorporated in the original plaint. Learned counsel further submitted that the amendment is necessary for determining the real controversy between the parties and if



the same is not allowed, the entire suit would become infructuous. Learned counsel referred to a decision of the Hon'ble Supreme Court in the case of ***Varun Pahwa Vs. Mrs. Renu Chaudha***, reported in ***AIR 2019 SC 1186***, wherein the Hon'ble Supreme Court held that it is well settled that amendment in pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. Learned counsel next referred to a decision in the case of ***Sushil Kumar Jain Vs. Manoj Kumar***, reported in ***AIR 2009 SC 2544***, wherein certain clarification on admission in amendment has been allowed. Learned counsel next referred to a decision of Co-ordinate Bench in the case of ***Hari Shankar Yadav & Ors. Vs. Dakhiya Devi & Anr.***, reported in ***2023(2) BLJ 600***, wherein the learned Single Judge held that the law is well settled that Rules of procedure are intended to be a handmaid to the administration of justice. The court always gives leave to amend the pleading of a party, unless it is satisfied that the



party applying was acting mala fide or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. Learned counsel next referred to a decision of this Court in the case of ***Yogendra Bahadur Singh Vs. Surendra Bahadur Singh & Ors.***, reported in ***2024(3) BLJ 143***, wherein this Court held that if the amendment was not allowed, two sets of pleadings, which are contradictory to each other, would come on record and cause unnecessary confusion and will cause hindrance in just and proper disposal of the suit before the learned trial court. Learned counsel next referred to a decision of Hon'ble Division Bench of this Court in the case of ***Arun Kumar Singh Vs. Nirmala Devi***, reported in ***2023(6) BLJ 195***, wherein it has been observed by the Division Bench that parties can lead evidence limited to their pleadings and parties while leading evidence cannot travel beyond pleadings and such party cannot be allowed to lead evidence.

11. Learned counsel for the respondents thus submitted that having considered the facts and circumstances, the learned trial court allowed the amendments and the same do not need any interference.

12. Learned counsel for the petitioners, by way



of reply, submitted that the argument made on behalf of the respondents are fallacious, amendments are not explanatory and entirely new set of facts are being pleaded. Learned counsel further submitted that he has no dispute with the legal proposition made in the authorities cited by the learned counsel for the respondents. If it was a mistake by the counsel, the same does not find mention in the amendment petition and no such case has been made out mistake of lawyer. Learned counsel further submitted that putting the plaint side by side the amendment and written statement, the amendments are malafide. Thus, learned counsel submitted that the present petition be allowed and the impugned order be set aside and amendment application of the plaintiffs/respondents be rejected.

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

14. Order 6 Rule 17 of the Code reads as under:-

“17. Amendment of pleadings.-

The Court may any any stage of the proceedings allow either party to alter or amend his pleadings 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 proviso prohibits amendments after commencement of trial unless due diligence is shown for not making the amendment prior to commencement of trial.

15. Now, commencement of trial has different connotation and the Hon'ble Supreme Court in the case of ***Baldev Singh & Ors. Vs. Manohar Singh & Ors.***, reported in ***(2006)6 SCC 498*** held that the commencement of trial as used in proviso to Order 6 Rule 17 of the Code must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. In the instant case, though issues have been settled, the evidence of the parties have not started. So the suit is still at nascent stage.



16. Learned counsel for the petitioners has assailed the order of the learned trial court allowing the amendment on a number of grounds. One of the grounds is amendments sought are not amendments rather it is overhauling of the plaint. Further, grounds have been taken that nature of suit, facts of the case and cause of action would change and the defence of the defendants would be demolished. Similarly, objection has been taken that inconsistent facts are being set up and the amendments are prejudicial to the case of the petitioners. Another ground which has been taken to oppose the amendment and the impugned order is that the order allowing amendment does not provide any reasons. I have perused the application filed by the plaintiffs/respondents seeking amendment. At the outset it has been mentioned that the need for amendment was felt after consultation with some senior counsel. Though in normal circumstances this could not be the ground for allowing the amendment to consider the prevailing situation, lack of competence of the counsel should not come in the way of determination of real controversy between the parties. It is also necessary to avoid multiplicity of litigation. The plaints are filed taking advice of legal counsels and if the learned counsel, for any reason, has not



been able to put forward the case of his client in the best possible manner, it is not expected that law will penalize such persons. Normally, the settlement of issues means trial has commenced and once it is so found, the person seeking amendment has to satisfy the court that despite of due diligence he could not have brought the amendment prior to the commencement of the trial. The case of the plaintiffs/respondents is not that he was not having the requisite information or documents for not bringing the amendment earlier in time rather the claim of the plaintiffs/respondents is based on the fact about poor advice of his counsel.

17. Now going through the amendment application of the plaintiffs, I find that most of the amendments are clarificatory and for making the pleading more meaningful and does not impact the nature of the suit. However, another grievance of the petitioners is that some time barred claim has been sought to be introduced. No doubt, courts frown upon raising of time barred claim if a fresh suit on the amended claim would be barred by limitation. However, Hon'ble Supreme Court in *Pankaja & Anr. Vs. Yellappa (D) By Lrs. & Ors.*, reported in *(2004)6 SCC 415* held that an application for amendment of the pleading should not be disallowed



merely because it is opposed on the ground that a fresh suit on the amended claim will be barred by limitation, on the contrary, the application will have to be considered bearing in mind the discretion with the Court in allowing and disallowing such amendment in the interest of justice. If there is dispute that the amendments sought is barred by limitation and it is not an admitted fact, the amendment sought should not be declined as held in ***Ragu Thilak D. John Vs. S. Rayappan & Ors.***, reported in ***(2001)2 SCC 472*** that the dominant purpose of allowing amendment is to minimise litigation. The Hon'ble Supreme Court further held that the plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for. Therefore, in each and every case where question of limitation about a claim being issued on this ground is raised, the amendments could not be disallowed every time. Moreover, when pleading is present with regard to the sale deeds being *void ab initio*, the issue of limitation is to be seen in this context and also about the necessity of challenging such document.

18. Though it has been repeatedly argued that the



amendments would change nature of the suit, it is a declaratory suit and ad valorem court fee has also been paid and if further declaration is sought against sale deeds, the same would not amount to changing the nature of the suit.

19. The foremost consideration before the court at the time of consideration of amendment application should be whether amendment is necessary for deciding the real controversy between the parties and for arriving at a just conclusion. If it is so, the amendments could be allowed even at later stage. If allowing the amendment could avoid multiplicity of litigation, the same is a relevant consideration, the Hon'ble Supreme Court summarized the law on this point in the case of ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.***, reported in ***2022 SCC OnLine SC 1128*** in paragraph 70 held as under:-

“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 negated.

(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. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)”.

20. Now, in the light of position of law discussed hereinbefore, I am of the considered opinion that whatever might be the insistence of the learned counsel for the petitioners on technicalities, it is to be kept in mind that the procedural laws are intended to be handmaid to the administration of justice. It is also settled law that a party cannot be refused the relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. Unless the amendments sought are malafide or the party had caused injury to the opponent by such mistake or blunder which cannot be compensated in terms of cost, the amendment ought to be allowed. From the facts of the case, I am of the opinion that the amendments sought are intended to rectify the mistake about the absence of material particulars in the plaint and therefore, a liberal view should be taken and the court may shun hyper technical approach while considering the application for amendment. Hence, in the light of aforesaid discussion, I am of the view that there is no



infirmity in the impugned order though reasons might be lacking in the order of the learned trial court. Further more, I do not think the other side could not be compensated with cost while allowing the amendment considering the fact that trial has just begun and only issues have been settled and no witnesses have been examined.

21. Therefore, for the reasons discussed hereinbefore, I do not find any error of jurisdiction on part of the learned trial court in allowing the amendment application and the impugned order 29.08.2018 is affirmed but subject to payment of cost of Rs.10,000/- by the plaintiffs/respondents to the contesting defendants/respondents on the first date of hearing before the learned trial court after passing of this order.

22. However, the petitioners will be given ample opportunity to rebut/controvert the claim of the plaintiffs/respondents sought to be brought through amendment, by allowing them to file amended written statement/additional written statement.

23. With the aforesaid direction, the present petition stands dismissed.

24. At the same time, it is made clear that any



observation touching upon the merit is only for the purpose of disposal of the present petition and no opinion has been expressed on the merits of the stand taken by the parties.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	27.02.2025
Uploading Date	07.05.2025
Transmission Date	NA

