

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.908 of 2018

Shanti Devi, Widow of Late Chandeshwar Mahto, Resident of Madhubani Town Mohalla - Maharajganj, Ward No. 13, Police Station Madhubani, District - Madhubani.

... .. Petitioner/s

Versus

Ranjit Kumar Purvey, Son of Shri Ram Krishna Purbey Resident of Madhubani Town, Mohalla - Maharajganj, Police Station Madhubani, District Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Prabhas Ranjan, Advocate
For the Respondent/s	:	Mr.Sanat Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 06-05-2025

The record taken up on mentioning being made on behalf of the petitioner.

2. Heard learned counsel for the petitioner and learned counsel for the respondent.

3. The petitioner is aggrieved by the order dated 07.04.2018 passed in Title Suit No. 199 of 2016 by the learned Sub Judge-IV, Madhubani whereby and whereunder the petition dated 28.07.2017 filed by the plaintiff/petitioner for amendment in the plaint has been rejected.

4. The learned counsel for the petitioner submits that the learned trial court has passed a cryptic order without giving



any reasons for rejection of the amendment application of the plaintiff. The amendment was sought prior to commencement of trial and the amendment pertains to subsequent development as the plaintiff has been dispossessed from the suit property and this fact was sought to be brought on record through the amendment seeking the relief of recovery of possession. Accordingly, paragraph regarding court fee has also been sought to be amended. The learned counsel further submits that there is no withdrawal of any admission. Thus, learned counsel submits that the impugned order could not be sustained and the same be set aside.

5. On the other hand, learned counsel for the respondent vehemently contends that the learned trial court has passed a correct order considering the nature of amendment. The learned counsel further submits that initially the plaintiff filed the suit seeking declaration against the sale deed dated 12.05.2008 executed by the plaintiff in favour of the defendant to be void and without consideration. She did not seek any declaration with regard to suit property regarding her right, title and possession. Subsequently, in order to meet limitation since she was never in possession, she has made out a new case by seeking relief of declaration of right, title as well as recovery of



possession. If amendment is allowed, the same would completely change the nature of suit. However, learned counsel fairly submits that the impugned order is without reasons and if this Court is inclined to interfere, the matter may be remanded to the learned trial court for passing a reasoned order.

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

7. Now, Order VI Rule 17 of the Code of Civil Procedure reads as under :

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

8. Normally, the Courts are liberal in allowing the amendment, if it is necessary for the purpose of determining the real questions in controversy between the parties.

9. The law has been settled by various decisions of



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

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in



injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, 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)”.

10. Now, coming back to the facts of the case, admittedly, the suit has been filed seeking declaration against the sale deed with regard to the suit property. If subsequently certain development has taken place and if the plaintiff was earlier claiming possession and now she has been dispossessed, the said amendment could not be denied.

11. So far as submission of learned counsel for the respondent about the plaintiff seeking a new relief of declaration of right over suit property is concerned, the same emanates from her previous plea claiming declaration of sale deed dated 12.05.2008 to be void since a natural corollary would be assertion of her claim over the suit property for which declaration is being sought, if the suit is decreed in favour of the plaintiff.

12. Further, from the records, I do not find allowing



the amendment would change the nature of suit. Hence, the finding of the learned trial court regarding change in the nature of the suit, in my view, is misconceived. If the amendment is not allowed, it will lead to unnecessary multiplicity of litigation. The amendment also appears to be necessary for the purpose of determination of real controversy between the parties.

13. Moreover, the suit is still at the initial stage and issues are yet to be settled though written statement of the defendant/respondent has come on record. Further, the impugned order is completely devoid of any reasons and such order could not be allowed to be continued.

14. In the light of aforesaid discussion, I am of the considered opinion that the learned trial court committed an error of jurisdiction when it refused to allow the amendment petition and rejected the same. Hence, I do not find the order dated 07.04.2018 to be sustainable in the eyes of law and, accordingly, the same is set aside. Consequently, the application dated 28.07.2017 filed by the plaintiff/petitioner before the learned trial court is allowed.

15. However, the respondent will be given ample opportunity to rebut/controvert the claim of the plaintiff/petitioner sought to be brought through amendment by



way of filing amended written statement/additional written statement.

16. As a result, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

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

