

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1799 of 2018**

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1. Babban Singh S/o late Sri Sahayee Singh
2. Urmila Devi W/o Sri Babban Singh
3. Manoj Kumar Singh
4. Pramod Kumar Singh, both Sons of Baban Singh All R/o Village Paharia, P.S. Bhagwanpur, Distt. Kaimur A/ R/o Bhabhua Ward No. 5, Patel Nagar, P.S. Bhabhua, Distt. Kaimur.

... .. Petitioner/s

Versus

1. Gyanendra Pratap Singh
2. Narendra Praatap Singh Son of late Ram Lakhan Singh
3. Most. Indu Kuer W/o late Satendra Pratap Singh
4. Jitendra Pratap Singh
5. Dharemenda Pratap Singh Son of late Satendra Pratap Singh All R/o Village P.O.- Akhlaipur, P.S. Bhabhua, Distt. Kaimur Bhabhua, A/p Village P.O. Kanta, P.S. Saiyadraja, Distt. Chandauli U.P.
6. Meera Devi W/o Sheo Prakash Singh, D/on late Ram Lakhan Singh R/o Bhabhua Gavain, Ward No. 20, P.S. Bhabhua, Distt. Kaimur at Bhabhua.
7. Sandhya Devi W/o Devendra Pratap Singh, D/o late Satendra Pratap Singh R/o Village P.O. P.S. Jamalpur, Distt. Mirzapur Uttar Pradesh.
8. Anil Kumar Singh Son of Sri Baban Singh R/o Village- Paharia, P.S. Bhagwanpur, Distt. Kaimur A/p Bhabhua Ward No. 5, Patal Nagar, P.S. Bhabhua, Distt. Kaimur.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Shashi Shekhar Dvivedi, Sr. Advocate<br>Mr. Manogya Singh, Advocate<br>Mr. G. R. Shahi, Advocate<br>Mr. Aditya Singh, Advocate |
| For the Respondent/s | : | Mr. Ashutosh Nath, Advocate<br>Mr. Amritanshu Dangi, Advocate<br>Md. Aatif Iqbal, Advocate                                         |

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

**Date : 14-08-2025**

The instant petition has been filed under Article 227 of the Constitution of India for quashing the order dated 16.07.2018 passed by learned Sub Judge-IV, Bhabhua (Kaimur) in Title Suit No. 158 of 2013 whereby and whereunder petition



dated 27.11.2017 filed by the original plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') has been allowed.

**02.** Briefly stated, the facts of the case are that one Most. Chameli Kuer (original plaintiff) filed Title Suit No. 158 of 2013 against the defendants/petitioners for cancellation of certain sale deeds bearing Nos. 92 to 97 dated 04.01.1993 in respect of Schedule-A land. As per the case of the plaintiff, the defendant no. 1/respondent no. 1 is the relative of the plaintiff. The respondent no. 1 had been helping the original plaintiff and her husband in consolidation matter before the Director Consolidation. The original plaintiff further claimed that she was the only daughter of her father and after his death, she filed a suit for partition bearing Partition Suit No. 46 of 1989 against her uncle and his children. The said suit was disposed of on compromise on 07.02.1993. While the plaintiff had been litigating the matter, the respondent no. 1, taking the plaintiff and her husband into confidence, made them to execute a number of sale deeds telling them that it would create strong evidence in their favour in the partition suit. The original plaintiff further claimed that all the sale deeds were executed without any consideration. In Partition Suit No. 46 of 1989, the



respondent no. 1 did not get himself impleaded, though he later on claimed that the original plaintiff executed sale deeds in his favour as well as in favour of his wife and sons. The defendants/respondents appeared and filed their written statement. The defendants/respondents submitted in the written statement that in Title Partition Suit No. 46 of 1989, plot no. 4130 of *Khata* No. 401 was also the subject matter. During pendency of the said suit, Chameli Devi executed sale deed nos. 92 to 97 dated 04.01.1993 in favour of defendants/respondents. The defendants of Partition Suit No. 46 of 1989 filed an injunction petition on 22.03.1993 praying therein that plaintiff-Chameli Devi be restrained from alienating the suit land and on 23.03.1993, details of the sale deeds executed by Chameli Devi were given. Thereafter, Chameli Devi filed rejoinder on 23.03.1993 in which she disclosed that she had executed sale deeds for valuable consideration and vendees are in possession over the vended land. On 12.04.1993, an order was passed in which the defendants and plaintiff were restrained from selling the land. Thereafter, the defendants of Partition Suit No. 46 of 1989 filed a petition under Order 14 Rule 2 of the Code in which they gave details of sale deed nos. 92 to 97 in paragraph-5 of the said petition and the copy of the same was supplied to



Chameli Devi. Thereafter, a compromise petition was filed in which one acre land of Plot No. 4130 including the land transferred through sale deed nos. 92 to 97 was allotted to Chameli Devi. Further Chameli Devi filed Mutation Case No. 869/95-96 for mutation of her name in Register-II in respect of 70 decimal land of said plot only excluding 30 decimal of lands transferred through sale deed nos. 92 to 97. Her name was entered into Register-II and she started paying rent only for 70 decimal of land. Later on, Chameli Devi further executed sale deed no. 9408 dated 17.10.1997 in favour of Shyamal Gupta and her sons had executed sale deed dated 27.07.2009 bearing No. 6975 in favour of Parmanand Kesari and in both the sale deeds, in Southern boundary, name of Baban Singh, defendant no. 1, has been mentioned. Thus, the defendants claimed that Chameli Devi admitted about the execution of sale deed nos. 92 to 97 and she had knowledge about execution of the aforesaid sale deeds and thus, the defendants sought dismissal of the suit of the plaintiff on the ground of limitation. The defendants/respondents also filed a petition under Order 7 Rule 11 of the Code for rejection of the plaint praying that the suit was not maintainable. During pendency of the suit, on 27.11.2017, plaintiff filed an application for amendment of the



plaint under Order-VI Rule 17 of the Code. The defendants/respondents filed the rejoinder on 06.12.2017. Written argument along with list of documents was filed by the defendants/petitioners. The learned trial court vide order dated 16.07.2018 allowed the amendment application of the original plaintiff and the said order is under challenge before this Court.

**03.** Mr. S.S. Dvivedi, the learned senior counsel appearing on behalf of the petitioners, submitted that the impugned order is not sustainable as the learned trial court failed to consider the different pronouncements of this Court as well as the Hon'ble Supreme Court wherein it has been laid down that facts which have been admitted by the parties cannot be permitted to be withdrawn and could not be substituted with different facts. Learned senior counsel further submitted that the order impugned has been passed without considering the points raised on behalf of the defendants/petitioners in their rejoinder, written argument and also to the rulings filed on their behalf. The order passed by the learned trial court is erroneous on the point that while allowing the amendment application, the trial court observed that issues have not been framed but the court lost sight of the fact that evidence of PW-1 Chameli Devi had already been filed on 16.07.2014. Learned senior counsel



further submitted that the plaintiff had filed the amendment application with sole ground to overcome the issue of limitation since the defendants/petitioners have brought on record a number of documents showing knowledge of the plaintiff about the sale deed nos. 92 to 97. The suit of the plaintiff was time barred. Now, the plaintiffs want to change the sale deeds with word '*Ekrarnama* (Agreement to Sale)' so as to overcome the issue of limitation being raised by the defendants/petitioners. Learned senior counsel further submits that the impugned order is cryptic and does not provide any reasons in passing the order. Learned senior counsel reiterated that learned trial court committed an error of record when it observed that no issues have been framed till date whereas issues have already been framed and examination-in-chief of PW-1 had already been filed on 16.07.2014. Learned senior counsel further submitted that the said amendment will completely change the nature of the suit as in place of sale deeds, the plaintiffs/respondents want to substitute the other word '*Ekrarnama* (Agreement to Sale)'. Learned senior counsel further submitted that the claim of the plaintiffs/respondents that both sides were restrained from transferring the land by the Collector-cum-District Registrar vide order dated 28.12.1992 is not correct as only the defendant-



Nathuni Singh was restrained in respect of land of Village-Arari, P.S. No. 389 of Bhagwanpur whereas further proceeding has been going on for the land situated in Bhabhua Municipality. From bare reading of the plaint, it appears it is not correct to say that due to some inadvertent mistake or typographical error, the word '*Baynama*' has been mentioned instead of word '*Ekrarnama*'. Thus, the admission has been made by the plaintiffs that the original plaintiff executed a number of sale deeds. Now, the plaintiffs/respondents want to resile from earlier statement made by the original plaintiff. Since the trial has commenced, the plaintiffs/respondents are required to show due diligence for not bringing the said fact in their plaint prior to commencement of the trial. Thus, the learned senior counsel submitted that the impugned order is not sustainable and the same needs to be set aside.

**04.** Learned senior counsel referred to the two decisions of Hon'ble Supreme Court in support of the case of the petitioners. First case referred is the decision in the case of ***Gautam Sarup vs Leela Jetly and Ors***, reported in **(2008) 7 SCC 85**, wherein the Hon'ble Supreme Court held that though it is the discretion of the court in permitting amendment to the pleadings, it has to be exercised judiciously. The Hon'ble



Supreme Court further held that once defendants has admitted the pleas and contentions of the plaintiff, he cannot be permitted to withdraw the same. Learned senior counsel further submitted that, in the present case, it is the specific case of the plaintiff that sale deeds were executed and such sale deeds were challenged seeking their cancellation and this fact has been mentioned in different paragraphs. But, now the plaintiffs/respondents want to withdraw this averment and want to substitute the word ‘*Baynama* (sale deed)’ with the word ‘*Ekrarnama* (agreement to sale)’. Learned senior counsel next referred to the decision of Hon’ble Supreme Court in the case of ***Ram Niranjana Kajaria vs Sheo Prakash Kajaria & Ors***, reported in **(2015) 10 SCC 203** on the same proposition, wherein the Hon’ble Supreme Court in Para-23 held as under:

*“23. We agree with the position in **Nagindas Ramdas** and as endorsed in **Gautam Sarup** that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in **Panchdeo Narain Srivastava**, does not reflect the correct legal position and it is overruled.”*

**05.** On the other hand, Mr. Ashutosh Nath, the learned counsel appearing on behalf of the respondents, contended that



there is no infirmity in the impugned order and the same needs no interference by this Court. Learned counsel further submitted that the original plaintiff, late Chameli Kuer, was fraudulently made to execute sale deeds in place of agreement to sale in favour of the defendants/petitioners. The signatures of the mother of the plaintiffs/respondents 1<sup>st</sup> set were obtained through fraud and misrepresentation and were used in executing the sale deeds. The mother of the plaintiffs/respondents 1<sup>st</sup> set came to know that defendant no. 1/petitioner no. 1 fraudulently made her to execute sale deeds instead of agreement to sale and thereafter, she filed the Title Suit No. 158 of 2013. In paragraph no. 16 as well as in paragraph no. 20 of the plaint, the word '*Ekrarnama*' has been mentioned but in paragraph-17, the word '*Bainama*' has got erroneously mentioned and after realizing the inadvertent typing mistake, the plaintiff filed the amendment application dated 27.11.2017 for substituting the word '*Bainama*' by the word '*Ekrarnama*'. The learned trial court, considering the fact that issues were not framed and further considering the inadvertent typing mistake, allowed the amendment petition vide impugned order dated 16.07.2018. Learned counsel further submitted that it is settled principle of law that prior to commencement of trial, amendment sought



must be considered liberally and should be allowed. The proviso would come into play only when the party fails to show due diligence on the date of filing of the amendment application. The trial has not commenced and issues are yet to be framed though inadvertently examination-in-chief of PW1 has been filed without issues being framed. Therefore, there is no error on record in passing the impugned order. Learned counsel further submitted that at the time of considering the petition for amendment of plaint, the court has to consider the plaint as a whole and one paragraph could not be considered separately. In the present case, the plaintiffs/respondents have mentioned the word 'agreement to sale' in preceding and subsequent paragraphs and as such, the use of word '*Baynama*' is nothing but a typographical mistake. The sole basis of the suit is that the petitioner no. 1 has fraudulently made the original plaintiff to sign on the impugned sale deeds purporting them to be agreement to sale. Learned counsel further submitted that the issue of limitation raised by the petitioners for suit being barred by limitation would be decided by the learned trial court and is not applicable at the stage of consideration of amendment of the plaint. Similarly, merits of proposed amendment are not to be considered at this stage. Thus, the learned counsel submitted



that there is no infirmity in the impugned order and the same needs to be sustained by this Court.

**06.** I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case. Order VI Rule 17 of the Code 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.”*

**07.** The Hon’ble Supreme Court in the case of ***M/s. Revajeetu Builders & Developers Vs M/s. Narayanaswamy & Sons & Ors***, reported in ***(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)*

**08.** In sum and substance, if the amendment is necessary for deciding the real controversy between the parties and for arriving at a just conclusion, such amendment could be allowed even at a late stage. The law on this point has been settled by various decisions of the Hon'ble Supreme Court and 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.”*

**09.** From the facts of the present case, it transpires that the amendment has been sought prior to commencement of trial and it transpires the issues have not been framed. Now,



opposition to the amendment by the petitioners is on the ground that an admission is being sought to be withdrawn. The plaintiff has been knowing from the very beginning that the documents being executed were sale deeds and in unamended paragraph, the word '*Baynama*' has been rightly entered, therefore, the amendment is *malafide*. Much stress has been put on the fact that the original plaintiff has been knowing that she was going to execute sale deeds and thus, executed the sale deeds and also handed over possession to the defendants. On a cursory glance, the objection of the defendants/petitioners appears tempting. But a deeper look shows otherwise. From the documents brought on record, no doubt, it appears that the plaintiffs/respondents might be having the knowledge about the documents being executed are sale deeds but this suit has been filed seeking declaration that the sale deeds are void as the same were without consideration and were sham documents. It has also been claimed that these documents were *void ab initio*. The original plaintiff filed the suit taking a stand that the petitioner no. 1 convinced her husband to allow him to get 02 *Aana* share in the suit property and it was the petitioner no. 1 who continued with this champertous litigation in which the original plaintiff had been trying to establish her right, title and interest over the



property opposing the claim of her cousin and seeking partition of the same. Further, the amendment is not sought to change the nature of documents from the documents of outright sale to the documents of agreement of sale. Rather, the plaintiff has sought the amendment in only paragraph no. XVII to substitute the word '*Baynama*' in line nos. 4 and 5 with the word '*Ekrarnama*'. Further, in subsequent paragraph-XX, the plaintiff has stated that defendant no. 1/petitioners no. 1 got documents of 'sale deed' prepared in place of documents of 'agreement of sale'. Even in preceding paragraph, it has been mentioned that defendant no. 1/petitioner no. 1 took the original plaintiff to *Bhabhua* for executing the documents of agreement of sale. Therefore, I am unable to convince myself that using word '*Ekrarnama*' in Paragraph-XVII, by way of agreement, could be said to be withdrawal of admission or the claim of the defendants/petitioners that the plaintiff was all along knowing about the nature of the documents and acted upon it, makes the amendment *malafide*. Later submission is with regard to the merits of the amendment and much stress has been put on this aspect of the matter that the original plaintiff admitted the execution of sale deeds in favour of the petitioners in Partition Suit No. 46 of 1989. But this contention about correction or



falsity of amendment sought cannot be decided at this stage. 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.”*



10. 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. In the present case, the claim of *malafide* is only on the ground of knowledge which has attributed to the plaintiff. However, accepting such submission tantamount to entering into the consideration of the merits of the case and this Court would not like to venture into forbidden territory.

11. There are two more amendments which have been allowed by the order of the learned trial court. One such amendment is with regard to sale deed dated 04.01.1993 being a void document for not obtaining permission of the Consolidation Authority prior to execution of the sale deed. Another amendment is with regard to averments with regard to Collector-cum-District Registrar restraining both sides from selling the disputed land vide order dated 28.12.1992. Basic facts relating to these amendments have already been mentioned



in the plaint and thus these amendments do not introduce any new case or change the nature of the suit. Moreover, these amendments have been sought prior to commencement of trial. I am of the view that all such amendments could be allowed as may be necessary for the purpose of determining the real questions in controversy between the parties, since they are not *malafide* or vexatious.

**12.** In the light of discussion made hereinbefore, I do not find any infirmity or error of jurisdiction while passing of the order dated 16.07.2018 by the learned Sub Judge-IV, Bhabua (Kaimur) and the same is hereby affirmed.

**13.** Accordingly, the present civil miscellaneous petition is dismissed.

**14.** However, it is made clear that observations made by this Court are only for the purpose of disposal of the present petition and would not cause prejudice in the mind of court in deciding the Title Suit No. 158 of 2013.

**(Arun Kumar Jha, J)**

Ashish/-  
V.K.Pandey

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