

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1702 of 2017**

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1. Upendra Manjhi
2. Yogendra Manjhi Both sons of late Shivpujan Manjhi resident of Ramchandrapur, P.S. - Thawe, District - Gopalganj.

... .. Petitioner/s

Versus

1. Prakash Manjhi
2. Parshuram Manjhi both sons of late Sudarshan Manjhi Resident of village - Ramchandrapur, P.S. - Thawe, District - Gopalganj.
3. Manju Devi W/o Krishna Ram resident of Thawe Videshi Tola, P.S. - Thawe, District - Gopalganj.
4. Neelam Devi W/o Dhrup Manjhi, D/o Sudarshan Manjhi Resident of Bargachia, P.S. - Thawe, District - Gopalganj.
5. Devendra Singh S/o Late Kuber Singh
6. Vimla Devi W/o Arun Singh
7. Sunaina Devi W/o Late Jaiprakash Singh
8. Ravi Pratap Singh @ Pintu Singh
9. Rajat Kumar @ Balhe Singh
10. Rita Kumari @ Budki all sons and daughter of late Jaiprakash Singh
11. Ajay Singh
12. Babloo Singh
13. Mantu Singh all sons of late Dharmendra Singh, grandson-in-law of Kuber Singh
14. Abhay Sharan Singh
15. Subodh Singh both sons of Randhir Singh
16. Harbansh Rai S/o Durga Rai All residents of Village - Ramchandrapur, P.S. - Thawe, District - Gopalganj.
17. Radhika Devi W/o Baban Manjhi
18. Vijendra Kumar Manjhi
19. Narendra Kumar Manjhi all sons of Ramprit Manjhi all residents of Village - Khargaouli, Jalalpur, P.S. Kuchaikote, District - Gopalganj.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Pankaj Kumar Dubey, Advocate |
| For the Respondent/s | : | Mr. Nagendra Rai, Advocate       |
|                      |   | Mr. Nawin Nikunj, Advocate       |

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



**Date : 28-02-2025**

Heard learned counsel for the petitioners as well as learned counsel for the respondents and I intend to dispose of the present petition at the stage of admission itself.

**02.** The petitioners are aggrieved by the order dated 30.06.2017 passed by the learned Sub Judge-VI, Gopalganj in Title Suit No. 589 of 2005, whereby and whereunder the learned trial court rejected the amendment petition dated 27.04.2017 filed by the plaintiffs/petitioners under Order VI Rule 17 of the Code of Civil Procedure (for short 'the Code').

**03.** Learned counsel for the petitioners submits that the petitioners are the plaintiffs before the learned trial court and they have filed Title Partition Suit No. 589 of 2005 for their claim of half share of the suit property apart from other relief(s). The matter proceeded and the plaintiffs adduced their evidence and while the matter was at the stage of evidence of the plaintiffs, the plaintiffs filed an application dated 27.04.2017 under Order VI Rule 17 of the Code for amendment in the plaint. The defendants filed their rejoinder on 25.05.2017, challenging the maintainability of the amendment petition. The learned trial court, vide order dated 30.06.2017, rejected the prayer made by the plaintiffs for amendment, which is under



challenge before this Court.

**04.** Learned counsel for the petitioners further submits that the amendments sought to be introduced are quite formal in nature and would help in just and fair decision of the case and for this reason, the learned trial court ought to have allowed the amendment petition. The learned trial court did not consider that that the it is a suit for partition and merely addition of some property would not prejudice the other side, even if it has been sought at the stage of the evidence of the plaintiffs. Further, the learned trial court did not consider the fact that no prejudice would be caused to other side if the proposed amendments are allowed, which are quite formal in nature. Thus, the learned counsel submits that the impugned order is bad in the eye of law and same needs to be set aside.

**05.** Learned counsel appearing on behalf of the respondents submits there is no infirmity in the impugned order and the same does not need any interference. Learned counsel further submits that the amendment petition itself was not maintainable as it has become time barred since the suit was filed in the year 2005 and the amendment has been brought in the year 2017, that too, after commencement of the trial and when the plaintiffs have already examined eight witnesses. The



plaintiffs/petitioners utterly failed to show why the amendments could not sought to be introduced earlier and prior to commencement of the trial. Learned counsel further submits that, moreover, a large number of amendments were sought to be incorporated in the plaint and a number of new facts have been mentioned in the amendment application. If all the facts were in the knowledge of the plaintiffs, they ought to have brought these facts earlier and not at this stage. Learned counsel further submits that the evidence of the defendants was closed and when the matter was at fag end when the evidence of the plaintiff was being closed and the matter was to be fixed for argument, the amendment petition was filed. Learned counsel further submits that the original plaintiff was himself a Teacher and was in quite fit condition when he filed the suit and he died after his evidence was closed. So, any averment about the original plaintiff not mentioning all the facts or not bringing all the properties or filing a piece-meal plaint is not sustainable. The plaintiffs/petitioners have failed to show any due diligence for not bringing the amendment earlier in time. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same be sustained.

**06.** I have given my thoughtful consideration to the



rival submission of the parties and perused the record.

**07.** Order VI Rule 17 of the Code which reads as under:-

*“17. Amendment of pleadings.-The Court may at 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.”*

**08.** From bare perusal of the provision, it is clear that the Court would not allow any amendment after the commencement of trial unless a party can show that despite due diligence, the amendment could not have been sought earlier in time. So seeking the amendment at this stage is bad as trial has not only commenced but it has also reached at its final stage.

**09.** Bare perusal of the amendment application shows it is an amendment petition of 11 pages and a large number of amendments have been sought in the plaint. Even the amendments have been sought when the evidence of the defendants has been closed and thereafter plaintiffs also got



examined all their witnesses on their behalf. For due diligence, the plaintiffs have just mentioned that late father of the plaintiffs (original plaintiff) was quite old person and at the time of filing of the plaint, he failed to mention all the properties and also the genealogical tree and except for one property, partition of all other properties which have been left to be mentioned, has been sought by this amendment. Thereafter, altogether 17 amendments have been sought including amendment in the details of property. I do not think such type of amendments could be allowed and at this stage. Firstly, the amendment petition seems to be made for overhauling the plaint and in the garb of amendment overhauling of the plaint could not be allowed. Reference could be made of the decision of Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.***, reported in ***2022 SCC OnLine SC 1128***, wherein it has been held that 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. Secondly, the amendment has been sought at a late stage when the parties have already recorded their evidence. Even the reasons mentioned for the amendment does not inspire any confidence.



Merely saying that the original plaintiff did not mention the fact appears to be absurd. Therefore, the amendment sought by the plaintiff/petitioner is clearly barred under the proviso to Order VI Rule 17 of the Code. The plaintiff/petitioner have utterly failed to show that despite due diligence they could not have raised the matter earlier in time. Hence, such amendment will be hit by proviso to Order VI Rule 17 of the Code. The Hon'ble Supreme Court in the case of ***Basavaraj vs. Indira & Ors.*** reported in ***(2024) 3 SCC 705***, has held that the Court should not allow the amendments at belated stages if due diligence has not been shown. In the case of ***Basavaraj*** (supra), the Hon'ble Supreme Court quoted the case of ***M. Revanna vs. Anjanamma*** reported in ***(2019) 4 SCC 332*** and held that Order 6 Rule 17 of the Code prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have earlier raised the issue. The Hon'ble Supreme Court further held that the burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier.

**10.** In the light of discussion made here-in-before, I do not find any infirmity in the impugned order and do not find



the learned trial court has committed any error of jurisdiction and hence, the impugned order dated 30.06.2017 passed by the learned Sub Judge-VI, Gopalganj in Title Suit No. 589 of 2005 is hereby affirmed.

11. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

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