

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.599 of 2024

1. Umesh Yadav son of Mosaphir Prasad Resident of village- Kendua P.S.- Hisua, District- Nawada.
2. Dinesh Yadav son of Mosaphir Prasad Resident of village- Kendua P.S.- Hisua, District- Nawada.
3. Akhilesh Yadav son of Mosaphir Prasad Resident of village- Kendua P.S.- Hisua, District- Nawada.
4. Mithilesh Yadav @ Mithilesh Kumar son of Mosaphir Prasad Resident of village- Kendua P.S.- Hisua, District- Nawada.

... .. Petitioner/s

Versus

1. Arjun Yadav son of Bodhi Yadav Resident of village- Kendua,P.S.-Hisua District- Nawada.
2. Kuldeep Yadav son of Bodhi Yadav Resident of village- Kendua,P.S.-Hisua District- Nawada.
3. Ravindra Yadav son of Arjun Yadav Resident of village- Kendua,P.S.-Hisua District- Nawada.
4. Barhu Yadav son of Arjun Yadav Resident of village- Kendua,P.S.-Hisua District- Nawada.
5. Chhotu Yadav son of Arjun Yadav Resident of village- Kendua,P.S.-Hisua District- Nawada.
6. Ram Pravesh Kumar son of Kuldeep Yadav Resident of village- Kendua,P.S.-Hisua District- Nawada.
7. Mithilesh Kumar son of Kuldeep Yadav Resident of village- Kendua,P.S.- Hisua District- Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Sinha, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 24-06-2025

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

02. The petitioners are aggrieved by the order dated



16.01.2024 passed by the learned Sub Judge-I, Nawada in Partition Suit No. 74 of 2006 whereby and whereunder the learned trial court rejected the amendment petition dated 27.04.2023 filed by the plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code').

03. Learned counsel for the petitioners submits that by way of their amendment application, the plaintiffs/petitioners have sought amendment in the plaint to add relief that registered sale deed no. 9241 dated 20.09.1963 and registered sale deed no. 10063 dated 27.07.1966 be declared to be void ab initio and not binding upon the plaintiffs apart from adding relief of Para-9/A after para-9 wherein they want to mention that plaintiffs came to know from written statement filed on behalf of the defendants about two sale deeds being absolutely void and the same did not confer any title and possession to the defendants. Learned counsel further submits that both the sale deeds have been executed by the person, who was having no title and was a stranger to the family and still, on the basis of these two documents, the respondent nos. 1 and 2 have been claiming the property as their own. Learned counsel further submits that the learned trial court did not consider the facts of the case and rejected the amendment application vide order date 16.01.2024.



The said order is not sustainable and fit to be set aside.

04. Perused the record.

05. Evidently, the amendments have been sought in the years 2023, specifically on 27.03.2023, when the partition suit is of the year 2006. The impugned order shows the defendants have filed their written statement on 02.11.2013 and in their written statement, in paras-14 and 15, specific averments about sale deeds dated 20.09.1963 and 27.07.1966, respectively have been made. It has also been claimed that execution of sale deeds was already within the knowledge of the grandfather and father of the plaintiffs, but they never challenged the sale deed. Even otherwise, after filing of the written statement, the plaintiffs have come to know about the existence of both sale deeds, still, they did not challenge the same within the stipulated limitation period and hence, the challenge to the sale deeds has become time barred. It also appears from the impugned order that the matter has come at the stage of argument after conclusion of the evidence of all the parties.

06. Now, Order VI Rule 17 of the CPC 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. Apparently, no due diligence has been shown on part of the plaintiffs in not seeking the amendment earlier and before the commencement of the trial. When the defendants brought to the knowledge of the plaintiffs about the existence of sale deeds, the plaintiffs were bound to challenge the same seeking declaration against it within three years of their knowledge as stipulated under Article 58 of the Limitation Act, 1963.

08. 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. From the facts of the present case, it is much apparent that no due diligence has been shown for not bringing the said amendment earlier at any point of time.

09. Further, the Hon'ble Supreme Court in the case of *M/s. Revajeetu Builders & Developers Vs M/s. Narayanaswamy & Sons & Ors*, reported in **2009 AIR SCW 6644** in paragraph 67 has formulated basic principles in Para-67 for allowing or rejecting the application for amendment which reads as under:-

“67. 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)

10. Thus, the plaintiffs/petitioners are trying to bring a time barred claim by way of amendment, which could not be allowed. The impugned order has also taken note of all the facts and it is a speaking order supported with reasons. Such orders need not be interfered with by this Court in a proceeding under Article 227 of the Constitution of India. Therefore, finding no infirmity and no error of jurisdiction in the impugned order dated 16.01.2024, the same is hereby affirmed.

11. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.06.2025
Transmission Date	NA

