

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1032 of 2019

1. Ishteyaque Ahmad alias Ishaque Ahmad Son of Miskat Ahmad, Resident of Mohalla Karim Chak, Chapra, Pargana Manjhi, P.S. Chapra Nagar, Pargana Manjhi, District- Saran.
2. Ehtesham Ahmad, Son of Miskat Ahmad, Resident of Mohalla Karim Chak, Chapra, Pargana Manjhi, P.S. Chapra Nagar, Pargana Manjhi, District- Saran.

... .. Petitioner/s

Versus

1. Kalim Pervez Son of Noorul Hoda, Resident of Mohalla Karim Chak, Chapra, Pargana Manjhi, P.S. Chapra Nagar, Pargana Manjhi, District- Saran.
2. Jamila Khatoon, Wife of Md. Kalamuddin, D/o of late Md. Sadique, Resident of Mohalla- Railway Colony, Katchehri Road, P.S. Chapra Nagar, District- Saran.
3. Miskat Ahmad @ Tasuffi Hussain, Son of Kafil Ahmad, Resident of Mohalla Karim Chak, Chapra, Pargana Manjhi, P.S. Chapra Nagar, Pargana Manjhi, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Hasnain Haider, Advocate
For the Respondent/s : Mr. Vijay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 27-06-2025

Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. The present civil miscellaneous petition has been filed against the order dated 23.03.2019 passed by the learned Sub Judge-VII, Saran at Chapra in Title Suit No. 169 of 2014 whereby and whereunder the learned Sub Judge rejected the amendment petition dated 09.08.2018 filed by the plaintiffs under Order VI Rule 17 of the Code of Civil Procedure (for short 'the Code').

3. Learned counsel for the plaintiffs/petitioners submits that the petitioners are the plaintiffs before the learned trial court



and they filed the Title Suit No. 169 of 2014 against the defendants/respondents for declaring the sale deed executed by defendant no.2 in favour of defendant no.1 on 05.12.2013 as null and void and not binding upon the plaintiffs with regard to schedule property as mentioned in the plaint. After the suit proceeded, in April, 2018, the plaintiffs were dispossessed from the suit property. One Rajni, who was Angan Bari Sewika, was handed over the premises and she was won over by the defendant no.1 and she started favouring defendant no.1. Learned counsel further submits that relief asked for in the plaint was only with regard to declaring the sale deed executed on 05.12.2013 by defendant no.2 in favour of defendant no.1 as forged and fabricated, null and void and inoperative. But under the changed circumstances, the necessity arose for adding in the relief portion the recovery of possession of the suit and for adding Rajni the Angan Bari Sewika as party to the suit. The defendants filed their rejoinder to the said application. However, the learned trial court, vide order dated 23.03.2019, rejected the prayer for amendment in the plaint. The said order is not proper and correct for the reason that the plaintiffs/petitioners sought to bring the amendment regarding the subsequent event as he has been dispossessed from the suit property at the instance of the defendants. Learned counsel further submits that the persons sought to be added as defendants



are the persons who are having the possession of the suit property at this moment and they are necessary party. But these facts were not considered by the learned trial court and the order rejecting the amendment application is not sustainable. Learned counsel further submits that the plaintiffs/petitioners would be greatly prejudiced if the amendment is not incorporated in the plaint. Learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Sampath Kumar vs. Ayyakannu & Anr.***, reported in ***AIR 2002 SC 3369***, wherein, in somewhat similar circumstances, the Hon'ble Supreme Court held that the basic structure of the suit was not altered by the proposed amendment when the suit was initially filed for issuance of permanent prohibitory injunction alleging the plaintiff's possession over the suit property and subsequently amendment was sought for relief of declaration of the title to the suit property and consequential relief of delivery of possession. Learned counsel further submits that in that case also the amendment was sought almost 11 years after the date of institution of the suit and the amendment was allowed on the ground that it was necessary to avoid multiplicity of litigation and it has further been held that it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. Thus, the learned counsel submits that the impugned order is bad in the eye of law and same needs to



be set aside.

4. Learned counsel appearing on behalf of respondents contends that there is no infirmity in the impugned order and the same does not need any interference. Learned counsel further submits that initially the suit was filed seeking declaration against sale deed dated 05.12.2013 apart from other reliefs. Now by way of amendment, the petitioners want to introduce the relief of recovery of possession and also declaration of title over the suit land. If the same is allowed, it will change the nature of suit. Learned counsel further submits that through the amendment petition, parties cannot be added. Thus, the learned counsel submits that nowhere in their plaint, the plaintiffs has mentioned about running of Angan Bari Centre on the suit land or letting out the premises to Rajni, Angan Bari Sewika, and getting rent from the said land. Rather, the construction over the suit property belongs to the defendants who has been coming into title and possession. Learned counsel reiterates that the plaintiffs want to bring out entirely a new case by way of amendment and the same is not acceptable as it will cause irreparable loss to the defendants. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same be sustained.

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



6. 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 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.”

7. All amendments could be allowed which are necessary for determination of real controversy between the parties and normally the amendments of routine nature are allowed without much ado. The present case has been filed seeking declaration against sale deed dated 05.12.2013 as forged, fraudulent and *void ab initio* document. Subsequently, amendments have been sought seeking relief for recovery of possession and for addition of two persons as parties. At the stage of amendment, merit of the amendment is not to be seen. If the plaintiffs claimed that they have been dispossessed from the suit property as their tenant came into collusion with the defendants, whether such statement is true or false, it is to be seen during the stage of trial and at the stage of amendment, the same could not be looked into by the courts. If the plaintiffs want to amend the plaint



for bringing certain subsequent events on record, amendment to that extent could be allowed and only time barred or *mala fide* amendments are frowned upon by the courts.

8. So far as addition of parties through amendment application is concerned, I am of the view that the plaintiffs could not do so as for addition of parties, the court has to exercise its judicial discretion to see that such persons are necessary or proper party or whether their presence is necessary for complete and effective adjudication of the case. Therefore, in the light of aforesaid discussion, I am of the considered opinion that so far as amendment in pleadings about their dispossession and seeking relief of recovery of possession and also for declaration of title is concerned, being subsequent events, they can be allowed and as held in the case of ***Sampath Kumar*** (supra) such amendment does not change the nature of the suit.

However, addition of parties by way of amendment petition is out of question as the plaintiffs/petitioners need to file appropriate application so that the other side could have ample opportunity to contest the same and the learned trial court could also make consideration in proper perspective. Therefore, the impugned order dated 23.03.2019 passed by the learned Sub Judge-VII, Saran at Chapra in Title Suit No. 169 of 2014 needs interference only to the extent of disallowing the amendment with



regard to dispossession and seeking relief of recovery of possession and declaration of title. However, rejection of amendment with regard to addition of two persons as defendant is concerned, the same has been rightly disallowed by the learned trial court and it does not need any interference.

9. Accordingly, the present petition stands allowed in part.

10. The petitioners are at liberty to move appropriate application for addition of parties, if so advised.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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