

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1438 of 2019

Vijay Pandey Son of Late Ram Singhasan Pandey Resident of Village- Jagdishpur, P.S. Pirpaiti, District-Bhagalpur.

... .. Petitioner/s

Versus

- 1.1. Godawari Devi W/o Late Baliram Pandey Resident of Village- Jagdishpur, P.S. - Pirpaiti, District - Bhagalpur.
- 1.2. Bum Pandey, S/o Late Baliram Pandey, Resident of Village- Jagdishpur, P.S. - Pirpaiti, District - Bhagalpur.
- 1.3. Shiv Pandey S/o Late Baliram Pandey, Resident of Village- Jagdishpur, P.S. - Pirpaiti, District - Bhagalpur.
2. Prakash Pandey Son of Late Indrasan Pandey Resident of Village- Jagdishpur, P.S. Pirpaiti, District-Bhagalpur.
3. Shyam Bihari Pandey Son of Late Indrasan Pandey. Resident of Village- Jagdishpur, P.S. Pirpaiti, District-Bhagalpur.
- 4.1. Muneshwari Devi, W/o Late Brameshwar Pandey, Resident of Village- Jagdishpur, P.S. - Pirpaiti, District - Bhagalpur.
- 4.2. Brahmdeo Pandey, S/o Late Brameshwar Pandey, Resident of Village- Jagdishpur, P.S. - Pirpaiti, District - Bhagalpur.
- 4.3. Shiv Pandey, S/o Late Brameshwar Pandey, Resident of Village- Jagdishpur, P.S. - Pirpaiti, District - Bhagalpur.
5. Ganpat Pandey Son of Late Radha Mohan Pandey Resident of Village- Jagdishpur, P.S. Pirpaiti, District-Bhagalpur.
6. Santosh Pandey Son of Late Radha Mohan Pandey Resident of Village- Jagdishpur, P.S. Pirpaiti, District-Bhagalpur.
7. Bipin Pandey Son of Late Radha Mohan Pandey Resident of Village- Jagdishpur, P.S. Pirpaiti, District-Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Pandey, Advocate Mr. Chandra Shekhar Verma, Advocate
For the Respondent nos. 2 & 3:		Mr. D.K. Pandey, Advocate Mr. Hansraj, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 24-02-2025

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

2. The petitioner is aggrieved by the order dated



10.05.2019 passed by the learned Munsif, Bhagalpur in Title Suit No. 68 of 2012 whereby and whereunder the learned Munsif rejected the amendment petition dated 30.01.2019 filed by the plaintiff/petitioner under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (for short 'the Code').

3. Learned counsel for the petitioner submits that the petitioner is the plaintiff before the learned trial court and he along with his brothers defendant 2nd party/respondent 2nd party jointly owned and possessed 1.09 acre land of bearing Khata No. 323 Plot No. 1724 situated in Mauza Maheshram, Thana No. 124, P.S.- Pirpaiti, Dist.- Bhagalpur which was purchased by the ancestor of the petitioner and respondents through sale deed. At the time of revisional survey, the name of the petitioner's father and his uncle were entered. Petitioner and his brothers were having 1/3rd share in the southern side of Survey Plot No. 1724 appertaining to Khata No. 323 measuring an area of 36¼ decimal. On the other hand, defendant 1st/respondent 1st set also jointly owned and possessed land of Khata No. 47, Kheshra No. 1725 situated in same Mauza measuring an area of 34 decimal and the said land was recorded in the name of Indrasan Pandey who was father of respondent 1st party. The



respondent 1st party, after death of his father, encroached upon 4 decimal of land of Khata No. 1724 which is the share of the plaintiff/petitioner. Learned counsel further submits that prior to the institution of the suit, the respondent 1st party colluded with the Anchal Amin and got prepared a completely vague report and the said report is biased, concocted and in favour of respondent 1st party. Though it was father of the petitioner who made preparation for measurement of disputed land. In these circumstances, appearing of name of the petitioner as 1st party on the report is very doubtful. Learned counsel further submits that biasness in the report of the Anchal Amin is evident from the fact that the area of land of petitioner has been reduced to 35 decimal in place of his shares $36\frac{1}{4}$ decimal. Learned counsel further submits that defendant 1st party/respondent 1st party brought this Amin report on record at quite belated stage before the learned trial court and for this reason the need arose for the petitioner to move the amendment application. Learned counsel further submits that in fact no measurement ever took place as it is the averment of the plaintiff in their deposition that application was made for measurement of the said land but due to opposition, the measurement was not done on the spot. This fact clearly shows that plaintiff/petitioner was not aware about



the Amin report which has been prepared separately in absence of the plaintiff/petitioner and in connivance with the respondent 1st party. Learned counsel reiterates that the plaintiff/petitioner was not aware about the Amin report and for this reason could not bring the amendment earlier. Learned counsel further submits that the plaintiff should be greatly prejudiced if the amendment is not incorporated in the plaint. Learned counsel further submits that the question was put to the plaintiff during cross-examination, when he came to know about the report of the plaintiff/petitioner and in reply thereof the plaintiff stated that no measurement ever took place as commotion started when the Amin went on the spot to measure both the plots. Learned counsel also submits that the report is vague as the Amin reduced the area purchased by the plaintiff/petitioner and increased the area of the defendant 1st party/respondent 1st party. 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 respondent 1st set vehemently contends that there is no infirmity in the impugned order and the same do not need any interference. Learned counsel submits that the matter is at its fag end before the learned trial court and it was fixed for argument. Earlier also



the plaintiff/petitioner moved amendment application which was allowed vide order dated 19.11.2018. Learned trial court has observed the tendency of the plaintiff to delay the trial and further held that the plaintiff has been filing repeated applications during the stage of argument and it seems the plaintiff/petitioner does not want to allow the suit to be disposed of. Learned counsel further submits that the plaintiff/petitioner has all along be knowing about the Amin report which was prepared on 11.07.2001 but the plaintiff/petitioner did not move appropriate application. After commencement of trial, the scope for the Court is very limited for allowing the amendment. The plaintiff/petitioner has failed to show any due diligence for bringing the amendment so late. Learned counsel further submits that the amendment application does not explain why the amendment was sought at such late stage. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same be sustained.

5. Having regard to the rival submission of the parties and the perusal of record, the issue before this Court is lies within narrow confines. The amendment sought by the plaintiff/petitioner has been refused by the learned trial court and admittedly it was at the stage of argument. 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.”

6. 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 sought could not be sought earlier in time. So seeking the amendment at this stage is bad as trial has not only commenced it has reached at its final stage.

7. Amendment sought by the plaintiff/petitioner reads as under:-

“It is submitted that the father of the plaintiffs had prayed the C.O., Anchal Pirpainti to measure both the plots no. 1724 and 1725 and a vague report was submitted by the Anchal Amin in measurement case no. 3/2001-2002. The defendants had left some land at the time of measurement and again they on 10.11.2010 encroached the suit property”

8. Now from the amendment sought, it is clear that the



proceeding for measurement of Plot Nos. 1724 and 1725 was initiated at the instance of father of the plaintiffs and the Anchal Amin submitted the report in Measurement Case No. 3 of 2001-2002. From the same amendment portion, it is also evident that there is no specific averment about defendant 1st party/ respondent 1st party encroaching upon the suit land on 10.11.2010. The application for amendment was filed on 30.01.2019. Further perusal of the amendment application shows no due diligence on part of the plaintiff. 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.

9. 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. From the impugned order it also appears that earlier also an amendment application of the plaintiff was allowed vide order dated 19.11.2018. The application filed for the amendment by the plaintiff/petitioner does not appear to be maintainable as it has been sought at quite belated stage and considering the bar of proviso to Order VI Rule 17 of the Code, such amendment could not be allowed.

10. In the light of discussion made hereinbefore, I do not find any error in the impugned order and do not find the learned trial court has committed any error of jurisdiction and, hence, the impugned order dated 10.05.2019 passed by the learned Munsif, Bhagalpur in Title Suit No. 68 of 2012 is affirmed.

11. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2025
Transmission Date	NA

