

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1570 of 2019**

1. Mahabir Prasad, Son of late Sammat Sah, Resident of Sakin Mouze- Mirzapur Tole Pamra P.S. and Distt. - Sitamarhi.
2. Ram Kishun Sah, Son of late Sam Sammat Sah, Resident of Sakin Mouze- Mirzapur Tole Pamra P.S. and Distt. - Sitamar.
3. Ram Sevak Prasad Sah @ Ram Sevak Prasad, Son of late Sammat Sah, Resident of Sakin Mouze- Mirzapur Tole Pamra P.S. and Distt. - Sitamar.

... .. Petitioner/s

Versus

1. Kishori Sah, Resident of Sakin Mouze- Mirzapur Tole Pamra P.S. and Distt. - Sitamarhi.
2. Nunnu Sah, Resident of Sakin Mouze- Mirzapur Tole Pamra P.S. and Distt. - Sitamarhi.
3. Circle Officer, Dumra at present Sitamarhi town.
4. The State of Bihar through Collector Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Bindeshwar Sah, Advocate
For the Respondent/s	:	Mr.Uday Kumar, Advocate

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

Date : 24-02-2025

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

2. The petitioners are aggrieved by the order dated 12.03.2019 passed by the learned Munsif, Sadar Sitamarhi in Title Suit No. 04 of 2013 whereby and whereunder the learned Munsif rejected the amendment petition dated 20.11.2018 filed on behalf of the plaintiffs/petitioners.

3. Learned counsel for the petitioners submits that the petitioners are plaintiffs before the learned trial court and have filed the title suit for declaration of title over the schedule



property being *khatiyani* ancestral property and seeking further declaration that entry in the revisional survey in the name of the father of the private respondents is illegal and void. Further declaration has been sought that the *Basgit Parcha* issued by respondent no.3 in favour of late Ramdev Sah, the father of the private respondents was illegal, void and non binding upon the petitioners. Learned counsel further submits that land pertaining to Survey New No. 472 under Khata No. 560 belongs to the petitioners but the father of the private respondents got issued a *Basgit Parcha* in his name for the disputed land in collusion with the Circle Officer. During pendency of the title suit, the private respondents have constructed a *pucca* house of bricks and tiles on the land in question in the year 2014 in the month of *Vaisakh*. The said fact was not in the knowledge of the petitioners and as soon as they came to know about the fact, they sought the amendment. An application dated 20.11.2018 was filed on behalf of the plaintiffs/petitioners and the same was heard and rejected by the learned trial court vide order dated 12.03.2019. Learned counsel further submits that the learned trial court has not considered the factual aspect of the matter necessary for the just decision in this case and, therefore, such order is not sustainable in the eye of law. The disputed land is



khatiyani ancestral land of the petitioners and there is already prayer in prayer portion as para 13 (¶) of the plaint that during course of pendency of this suit the Advocate Commissioner be appointed for the fact finding and direction be made to the private respondents for maintaining *status quo*. Learned counsel further submits that respondent is not disputing the *khatiyani* ancestral land in the property of the petitioners and has not stated anything as to how and why the *Basgit Parcha* was issued against the requirements of law. Learned trial court ought to have considered the fact that for real determination of the controversy between the parties and for just decision in this case, ought to have allowed the amendment application. Therefore, the impugned order is fit to be rejected and the amendment petition of the petitioners needs to be allowed.

4. Learned counsel appearing on behalf of the respondent nos. 1 and 2 vehemently opposes the submission made on behalf of the petitioners. Learned counsel submits that there is no infirmity in the impugned order and there is no need to interfere with the same. Learned counsel further submits that the plaintiffs have brought a time barred suit which is barred under Article 100 and 113 of the Limitation Act. Further, the plaintiffs/petitioners have admitted the title and possession of



the father of the defendant 1st party and has also stated about *Basgit Parcha* being issued in the year 1973 and 40 years thereafter, the present suit has been filed. The amendment has been sought at the stage of the evidence of the parties. Therefore, the same is barred under proviso to Order VI Rule 17 of the Code of Civil Procedure (for short 'the Code'). Hence, there is no infirmity in the impugned order and the same does not require any interference.

5. Having regard to the facts and circumstances, rival submissions of the learned counsel for the parties and on perusal of record, I find that while bringing the amendment, the plaintiffs/petitioners have not stated anything about date of their knowledge and not bringing the said amendment earlier though it has been stated that the defendants constructed the brick and tiles house on the suit property without any information to the plaintiffs. Further, amendment has been sought about removal of the structure created by the defendants from the suit land and handing over the possession to the plaintiffs/petitioners. But the amendment application has been filed after much delay and without explanation since the plaintiffs admittedly came to know about the structure created by the defendants in the month of *vaisakh* of the year 2014 and the amendment application has



been filed on 20.11.2018 without any explanation for not bringing the amendment earlier before the learned trial court. The suit has been filed in the year 2013. The trial has already commenced and therefore, the amendment sought by the plaintiffs/petitioners is barred under proviso to Order VI Rule 17 of the Code. 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.”

6. From bare perusal of the provision, it is clear that the Court could not allow any amendment after the commencement of trial unless a party can show that despite due diligence, the amendment sought could not be brought on record earlier in time. Though the cause of action for bringing the amendment is said to have arisen in 2014 but the amendment



application is completely silent about the fact when the plaintiffs got the knowledge while they have all along been claiming the possession of the suit land. The claim of the plaintiffs about subsequent development gets diluted in these circumstances and the trial was allowed to proceed and amendment has been sought without showing any due diligence. Reliance could be placed on the case of *Basavaraj vs. Indira & Ors.* reported in *(2024) 3 SCC 705*, wherein the Hon'ble Supreme Court held that the Courts should not allow the amendments at belated stages if due diligence has not been shown. Learned trial court has considered all the aspects of the matter and rightly rejected the amendment application.

7. In the light of discussion made hereinbefore, I do not find any reason to differ with the finding recorded by the learned trial court. Hence, the impugned order dated 12.03.2019 passed by the learned Munsif, Sadar Sitamarhi in Title Suit No. 04 of 2013 is affirmed having no infirmity.

8. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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