

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1106 of 2023

1. Arun Kumar Singh S/o Gopal Prasad Singh R/o Sheo Lok Apartment, ABN School, New Patliputra Colony, Boring Road, Patna, P.S- Patliputra, Bihar-800013
2. Ajit Kumar Singh S/o Gopal Prasad Sinha R/o Gopal Prasad Sinha, Flat No. 605, Geeta Enclave, Pillar No. 242, Digha AIIMS Elevated Road, Near Bachpan Play School, East Gola Road, Digha, P.S. Danapur, Patna, Bihar-801503

... .. Petitioners

Versus

Abhimanyu Prasad Singh S/o Late Gupteshwar Singh, R/o Village- Karma Bhagwan, P.S.-Aurangabad, P.O.- Karma Bhagwan, District- Aurangabad, Bihar.

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr. Dayanand Singh, Advocate Mr. Dhananjay Kashyap, Advocate
For the Respondent	:	Mr. Parth Gaurav, Advocate Ms. Gargi, Advocate Ms. Ridhima Dvivedi, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date :17-06-2025

The instant civil miscellaneous petition has been filed by the petitioners for setting aside the order dated 09.08.2023 passed by learned Munsif, Civil Court, Aurangabad in Title Suit No. 87 of 2000, whereby and whereunder the learned trial court has allowed the amendment application dated 31.03.2023 filed by the plaintiff/respondent under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

02. The factual matrix of the case, in short, is that the respondent filed Title Suit No. 87 of 2000, challenging the gift deed dated 04.02.1972 executed by father of the plaintiff in



favour of defendant nos. 1 and 2, seeking declaration that the gift deed was inoperative and void. The suit has been filed against the petitioners who have been made defendant nos. 1 and 2 and the defendant no. 3 was father of defendant nos. 1 and 2. During pendency of the suit, respondent filed an application for amendment of plaint on 30.11.2009, challenging another gift deed dated 04.02.1972 executed by father of the respondent in favour of one Anju Lata Singh but the said amendment application was withdrawn on 21.01.2012 with submission that a fresh amendment application would be filed. Thereafter, a fresh amendment application was filed by the respondent on 21.01.2012 against which the petitioners filed a rejoinder and the said application was dismissed with direction to file a fresh application mentioning therein the date of knowledge of the gift deed sought to be brought on record and challenged by the proposed amendment. Subsequently, the respondent filed another application for amendment of plaint vide application dated 31.03.2023. A rejoinder was filed to this amendment application by the petitioners. The learned trial court, on consideration of case of the parties, allowed the amendment application with cost of Rs. 1,600/-. This order is under challenge before this Court.



03. The learned counsel for the petitioners submitted that the impugned order has been passed illegally without appreciating the fact that the amendment application was hopelessly barred by limitation and there has been concealment of material facts by the respondent. Allowing the amendment has caused serious prejudice to the rights of the petitioners and the impugned order is in contravention of the settled principles of law. Learned counsel further submitted that the learned trial court has failed to consider that challenging the gift deed of 4th of February, 1972, by way of amendment, is time-barred. The respondent had all along been knowing about the said gift deed and still failed to challenge the same. The respondent has filed an application in *Chakbandi* Case No. 140 of 1983 wherein he has mentioned that his father had not executed any deed in favour of Anju Lata Singh, as the respondent challenged the claim of Anju Lata Singh about execution of the deed in her favour by the father of the respondent. Learned counsel further submitted that respondent never denied the averment made in the application nor denied his signature or handwriting. Therefore, the plaintiff has not provided any reasonable or sufficient cause for not bringing this fact in his plaint though he was having knowledge of the same since the institution of



Chakbandi Case No. 140 of 1983 before *Chakbandi* Officer, Aurangabad. Learned counsel further submitted that the learned trial court has allowed a time barred claim and serious prejudice has been caused to the petitioners. Learned counsel referred to the decision in the case of ***Radhika Devi Vs. Bajrangi Singh & Ors.***, reported in ***(1996) 7 SCC 486*** wherein the Hon'ble Supreme Court relying on the decision in the case of ***Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala***, reported in ***[1964] 2 SCR 567*** held that the ratio of the latter case squarely applies to a situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. Learned counsel next relied to a three Judge Bench decision of Hon'ble Supreme Court in the case of ***T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board***, reported in ***(2004) 3 SCC 392*** wherein referring to the decision in the case of ***L.J. Leach & Co. Ltd. v. Jardine Skinner and Co.***, reported in ***AIR 1957 SC 357***, it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application and thus the Hon'ble Supreme Court dismissed the appeal which has challenged the order of a LPA Bench of



High Court of Madras which set aside the order of learned Single Judge by which amendment was allowed. Thus, the learned counsel submitted that the respondent had the knowledge about the gift deed in the year 1984 and he did not challenge the same till filing the application for amendment before the learned trial court and therefore, the respondent has been trying to bring a time barred claim by way of amendment and the same could not be allowed. Learned counsel further submitted that in *Chakbandi* Case No. 140 of 1983, Gopal Prasad Singh, father of the petitioners had moved an application for consolidation in reference to property acquired by Anju Lata Singh vide deed no. 1799 of 04.02.1972. In the said case, the respondent vide application dated 21.03.1984 raised objection submitting that the gift deed was executed in the name of Anju Lata Singh in *Mauja Alampur* and not in *Mauja-Fesar*. As such, it becomes abundantly clear that in application dated 21.03.1984, respondent has referred to gift deed no. 1799 dated 04.02.1972 and the said gift deed was well within the knowledge of respondent. Moreover, no other instrument/sale deed had been executed by Gupteshwar Singh in favour of Kumari Anju Lata Singh except for the gift deed dated 04.02.1972. As the gift deed dated 04.02.1972 has been brought



under challenge after 51 years, as such, the valuable right accruing due to limitation has been frustrated by the effect of the impugned order and for this reason, the impugned order is fit to be set aside.

04. The learned counsel appearing on behalf of respondent vehemently contended that there is no infirmity in the impugned order and the same does not need any interference by this Court. Learned counsel submitted that the learned trial court, on consideration of submission made on behalf of the parties, proceeded to pass the impugned order. The learned trial court has considered the objection raised by the petitioners that the respondent had the knowledge of gift deed in 1984 but he did not file any suit against the said gift deed and for this reason, the amendment was barred by limitation. The learned trial court after due consideration rejected this contention of the petitioners. Learned counsel further submitted that objection of the petitioners on this ground is misconceived and has been rightly rejected by the learned trial court. Learned counsel further submitted that, moreover, the contents of the application purportedly filed by the respondent on 21.03.1984 talks about *kewala* (sale deed) and there is nothing in the averment which might be construed as application refers to gift deed which has



been sought to be challenged by way of amendment by the respondent.

05. Learned counsel for the respondent further submitted that the case is still at pretrial stage and Order-VI Rule-17 of the Code confers wide jurisdiction on the court to allow either parties to alter or amend the pleadings on such terms as may be just for determination of real questions in controversy between the parties. Learned counsel further submitted that the Courts have, time and again, held that pretrial stage amendments are to be allowed liberally than those that are sought to be made after commencement of the trial. The dominant purpose of allowing the amendment is to minimize the litigation and in the present case where submission has been made that the relief sought by amendment was barred by limitation is arguable, such amendment cannot be disallowed. The defendants would always have the opportunity to file their reply by way of amended written statement/additional written statement and cross-examining the witnesses and leading their own evidence on this point. Learned counsel further submitted that the respondent got the knowledge about gift deed in question on 23.11.2009 for the first time whereas petitioners claimed that the respondent got the knowledge about said gift



deed on 21.03.1984 and it gives rise to disputed question of fact and can only be resolved only after leading evidence. Therefore, factum of knowledge about the deed of gift being challenged by way of amendment becomes a triable issue and for this reason, learned trial court has rightly passed the impugned order allowing the amendment which does not warrant any interference by this Court under the supervisory jurisdiction. Learned counsel further submitted that the petitioners have been trying to impute knowledge to the respondent by referring to an undated application filed by their father, defendant no. 3, but the same cannot prove knowledge of the plaintiff about execution of any gift deed. Moreover, the said application has been filed and has been signed by Gopal Prasad Singh and not by this plaintiff and knowledge of plaintiff cannot be inferred. Learned counsel further submitted that the petitioners want adjudication of a triable issue in supervisory jurisdiction of this Court and the same cannot be permitted, as only challenge to allowing the amendment is to be seen by this Court and not disputed questions of fact.

06. In support of his contention, learned counsel for the respondent referred to a number of authorities. Learned counsel referred to the decision of Hon'ble Supreme Court in



the case of ***Mohinder Kumar Mehra Vs. Roop Rani Mehra & Ors.***, reported in ***2018(1) PLJR 91(SC)***, wherein the challenge was to the relief which was sought to be amended was found to be barred by time and also giving rise to a separate cause of action and the Hon'ble Supreme Court relied on the decision in the case of ***Mahila Ramkali Devi & Ors. v. Nandram (Dead) through Lrs. & Ors.***, reported in ***(2015) 13 SCC 132*** wherein in Paragraphs-20, 21 and 22 held as under:

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.

22. In Jai Jai Ram Manohar Lal v. National Building Material Supply [(1969) 1 SCC 869 : AIR 1969 SC 1267] , this Court held that the power to grant amendment to



pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.”

07. Learned counsel for the respondent next referred to the decision of Hon’ble Supreme Court in the case of ***Baldev Singh & Ors. vs. Manohar Singh & Anr.*** reported in ***(2006) 6 SCC 498*** wherein the Hon’ble Supreme Court relied on the decision in the case of ***Raghu Thilak D. John Vs. S. Rayappan & Ors.***, reported in ***(2001) 2 SCC 472*** wherein it was held that in the circumstances of the case plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for and thus, the Hon’ble Supreme Court allowed the amendment application holding that the plea of limitation can be allowed to be raised as an additional defence. Learned counsel next relied on the decision of a learned Single Judge of this Court in the case of ***Anup Kumar & Anr. Vs. Narain Prasad and Ors.***, reported in ***(2011) 4 PLJR 729*** wherein paragraph-20 reads as under:

“20. In view of my above discussion, it appears that the plaintiffs filed the amendment application because of the defence taken by the defendants in the written statement. As has been held above by the Hon'ble Apex Court that the pre-trial



amendments are to be allowed liberally than those which are sought to be made after commencement of the trial. No doubt, the proviso added to Order VI, Rule 17 is couched in language of mandatory form but since the rule regarding amendment including the proviso is procedural provision relating to amendment of pleadings and the limitations in respect thereof the same should be interpreted to advance justice and not to defeat justice. The Court should not adopt too technical approach on one way or the other. The discretion should be exercised judiciously considering the facts of each case. No straight jacket formula can be framed. The Hon'ble Supreme Court as quoted above has given some guidelines but those guidelines are not exhaustive but are illustrative only. The discretion is left open on the Court which is to be decided in considering facts and circumstances in each case. The Court should not apply such beneficent provision in a pedantic manner."

08. Learned counsel for the respondent next referred to the decision in the case of ***Raghu Thilak D. John (supra)*** wherein the Hon'ble Supreme Court held that the dominant purpose of allowing the amendment is to minimize the



litigation. Learned counsel lastly relied on the decision of Hon'ble Supreme Court in the case of ***Sampath Kumar Vs. Ayyakannu & Ors.***, reported in (2002) 7 SCC 559 wherein the Hon'ble Supreme Court in Paras-11 to 13 held as under:

“11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits 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. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and



thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

12. On the averments made in the application, the same ought to have been allowed. If the facts alleged by the plaintiff are not correct it is open for the defendant to take such plea in the written statement and if the plaintiff fails in substantiating the factual averments and/or the defendant succeeds in substantiating the plea which he would obviously be permitted to raise in his pleading by way of consequential amendment then the suit shall be liable to be dismissed. The defendant is not prejudiced, more so when the amendment was sought for before the commencement of the trial.

13. For the foregoing reasons, the appeal is allowed. The impugned orders of the High Court and the trial court are set aside. The plaintiff is permitted to incorporate the plea sought to be raised by way of amendment in



the original plaint foregoing the plea to the extent given up by him before the trial court. However, in view of the delay in making the application for amendment, it is directed that the plaintiff shall pay a cost of Rs 2000 (Rupees two thousand only) as a condition precedent to incorporating the amendment in the plaint. The prayer for declaration of title and recovery of possession shall be deemed to have been made on the date on which the application for amendment was filed.”

09. On the strength of authorities, learned counsel for the respondent submitted that the learned trial court has rightly proceeded in the matter and allowed the application of amendment filed by the respondent. Learned counsel further submitted that the authorities referred by the learned counsel for the petitioner are not application in the present circumstances of the case as the facts of those cases were very different from the facts of the present case. Learned counsel further submitted that even in the case of ***T. N. Alloy Foundry Co. Ltd. (supra)***, the Hon’ble Supreme Court has held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be



ordered and does not affect the power of the Court to order it. Thus, the learned counsel submitted that there is no infirmity in the impugned order and the same needs to be affirmed.

10. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case. 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 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”.

11. Though a number of amendments have been sought for by the respondent, the order allowing the amendment has been challenged only on the ground that some time barred relief has been allowed to be brought on record by way of amendment application. Admittedly, the case is still at the pretrial stage. There is no admission which is being sought to be



withdrawn by the respondent. The challenge to the amendment is only on the ground that the respondent had knowledge about the gift deed on 21.03.1984 and he sought the amendment after almost 40 years of his knowledge and 51 years of the execution of the gift deed. There is no admission by the respondent regarding this averment made by the petitioners. The respondent claims that he got the knowledge only on 23.11.2009 and thereafter, filed the application for amendment which was subsequently withdrawn and thereafter, another application to the same effect was dismissed with liberty to the respondent to file a fresh application giving date of his knowledge. In these circumstances, the knowledge of the respondent becomes a disputed question. The learned trial court was also confronted with the same question and it rejected the contention of the petitioners. If the contention of the parties give rise to a disputed questions of fact, the same could be thrashed out only after adducing the evidence by the parties and it would not be proper to form any opinion on the basis of contention of one of the parties or on the basis of ambivalent document. Therefore, purportedly a time barred relief can be sought by way of amendment if the same raises a disputed question of fact about limitation and allowing such amendment cannot be faulted.



12. The Hon’ble Supreme Court in the case of *Pankaja v. Yellapa*, reported in *(2004) 6 SCC 415*, relying on the decision in the case of *Raghu Thilak D. John (supra)*, allowed the amendment prayed for holding that the question of limitation has to be decided in the trial and directed the trial court to frame necessary issue with regard to limitation and decide the said issue in accordance with law bearing in mind the law laid down in the case of *L.J. Leach and Co. Ltd. (supra)*.

13. Therefore, in the light of the aforesaid discussion, I am of the considered opinion that the learned trial court proceeded in the matter in proper manner and there is no error of jurisdiction while passing the impugned order and hence, the impugned order dated 09.08.2023 passed by learned Munsif, Civil Court, Aurangabad in Title Suit No. 87 of 2000 is affirmed.

14. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	11.04.2025
Uploading Date	17.06.2025
Transmission Date	NA

