**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CIVIL MISCELLANEOUS JURISDICTION No.246 of 2018**

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1. Shiv Kumari Kuar,
2. Yashpal Chaurasiya
3. Pushpa Devi,
4. Ram Naresh Bhagat,

... ... Petitioner/s

Versus

1. Anil Bhagat,
2. Most. Sasafi Devi,
3. Ramita Kumari,
4. Anita Kumari,
5. Sabita Devi,
6. Ramashray Jha, ice

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Dhananjay Kumar Tiwary, Advocate

For the Respondent/s : Mr. Naresh Prasad, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**

**CAV JUDGMENT**

**Date : 15-03-2023**

Heard learned counsel for the parties.

2. The instant application has been filed against the order dated 28.10.2017 passed in Title Suit No. 98 of 1991 by the learned Court of Sub Judge-XI, Gopalganj, whereby and whereunder the petition dated 28.10.2017 filed by the plaintiffs / petitioners under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment in plaint has been rejected.

3. The brief facts of this case are that the petitioners / plaintiffs filed Title Suit No. 98 of 1991 for partition of the suit land as well as declaration of gift deed as void, inoperative and not binding upon the petitioners. The defendants / respondents appeared in the suit and filed their written statement denying the claim of the petitioners made in the plaint and on the basis of pleading of both the parties, the issues were framed. The parties adduced oral as well as documentary evidence to prove their case and the case was proceeding for argument. The plaintiffs / petitioners while preparing for argument found that due to typographical mistake certain error has been committed with respect to area as well as with regard to number of the plot of the suit land then the plaintiffs filed amendment petition under Order 6 Rule 17 of C.P.C. which was dismissed by the impugned order.

4. Learned counsel for the petitioners submits that the

learned trial Court failed to consider that the proposed amendment is formal in nature which will not change the nature of the suit. Further he has submitted that the trial Court failed to consider that if the proposed amendment is not allowed, it will occasioned multiplicity of litigation and no prejudice would be caused to the respondents.

5. On the other hand, learned counsel for the respondents submits that by the proposed amendment the petitioners want to withdraw their admission which will change the nature of the suit at the belated stage. He has further submitted that due diligence has not been shown by the petitioners and the petitioners have not given any explanation of the delay in filing amendment petition at the stage of argument in an old suit of year 1991.

6. Having heard the learned counsel for the parties and considering the material available on record, it appears that suit is of year 1991 and the case is fixed for argument. The trial Court observed that the plaintiffs want to change in the schedule which is subject matter of partition and also want to change its area. It is also observed that there was sufficient time to the plaintiffs to brought the amendment if required but bringing of amendment at the stage of final argument without stating any

reason cannot be allowed and the amendment petition is a misuse of process of law and has been filed with *mala fide*. The proposed amendment will change the total area of suit land and also its Khata and Plot number, on these grounds the trial Court rejected the amendment application vide the impugned order which is legal, requires no interference by this Court under Article 227 of the Constitution.

7. The Hon'ble Supreme Court in the case of **Shiv Gopal Sah @ Shiv Gopal Sahu Vs. Sita Ram Saraugi and Others reported in (2017) 14 SCC 120** in paragraphs no. 11 and 12 held:-

> "11. We have gone through the amendment application carefully where we do not find any explanation whatsoever for this towering delay. We would expect some explanation, atleast regarding the delay since the delay was very substantial. The whole amendment application, when carefully scanned, does not show any explanation whatsoever. This negligent complacency on the part of the plaintiffs would not permit them to amend the plaint, more particularly when the claim has, apparently, become barred by time.
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> 12. It is quite true that this Court in a number of decisions, has allowed by way of an amendment even the claims which were barred by time. However, for that there had to be a valid basis made out in the application and first of all there had to be *bona fide* on the part of the plaintiffs and a reasonable explanation for the delay. It is also true that the amendments can be introduced at any

> stage of the suit, however, when by that amendment an apparently time barred claim is being introduced for the first time, there would have to be some explanation and secondly, the plaintiff would have to show his bona fides, particularly because such claims by way of an amendment would have the effect of defeating the rights created in the defendant by lapse of time. When we see the present facts, it is clear that no such attempt is made by the plaintiffs anywhere more particularly in the amendment application."

8. The Hon'ble Supreme Court in the case of **J. Samuel and Others Vs. Gattu Mahesh and Others reported in (2012) 1 PLJR SC 412** observed that the entire object of amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delay in filing the application.

9. It is further observed that the claim of typographical error / mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to in any event, omission of mandatory requirement running in three to four sentences cannot be a typographical error as claimed by the

plaintiffs.

10. This Court in the case of **Sayed Hasibuddin Vs. Syed Md. Akram Hussain and Others (2006) 4 PLJR 260** in paragraph 3 observed that the said proviso has been added in year 2002 by Code of Civil Procedure Amendment Act, 2002 and it came into force with effect from 01.07.2002. The onus is now on the parties seeking the amendment to satisfy the Court that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In other words, amendments are not to be allowed merely because they are clarificatory in nature or removing any ambiguity after trial has commenced. There is a drastic change in the powers of the Court to consider and allow the amendments once trial has commenced.

11. In the present case, there is no explanation of due diligence for filing amendment petition at the stage of final argument and the only excuse given is that at the time of preparation of it came to the knowledge that due to mistake of typist, some wrong facts have been typed. This is contrary to due diligence clause contains in the proviso of Order VI Rule 7 C.P.C.

12. It is clear that there is no explanation of due diligence

for bringing the amendment at the stage of final argument.

13. In view of the aforesaid facts and circumstances and the legal provisions discussed above, I find that the trial Court did not commit any error of jurisdiction calling for interference by this Court, this application is, accordingly, dismissed.

**(Sunil Dutta Mishra, J)**

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| **AFR/NAFR** | NAFR |
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