IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.657 of 2017

==========

Kamal Kishore Prasad, Son of Late Ram Prasad Lal, Resident of Chandan Market, Mahnar, Bazar, P.O. and P.S.- Mahnar, District- Vaishali, at presently residing at Barnwal Store, Exhibition Road, Patna-1.

... ... Petitioner/s

Versus

1. Sri Lal Kumar Rai
2. Shri Lalji Rai @ Lalji Prasad,
   Both son of Late Bhagera Rai,
3. Shri Langaru Rai @ Shyam Babu Rai, Son of Late Doman Rai,
   All are residents of Village- Mainpura, Mohalla- Nehru Nagar, P.S.- Patliputra and District- Patna.

... ... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr.Dhirendra Kumar, Advocate
For the Respondent/s : Mr.Mritunjay Prasad Singh, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

Date : 12-06-2024

The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 27.01.2017 passed by learned Sub Judge-VIII, Patna in Title Suit No. 56/2001 whereby and whereunder petition dated 14.09.2016 filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'the Code') has been rejected.

2. Briefly stated the case of the petitioner is that the petitioner is one of the plaintiffs before the learned trial court, who has filed a suit for declaration of title on the suit land

described in Schedule II and also for confirmation of possession over the suit land. Further relief has been sought that if the plaintiff is dispossessed by the defendants during the pendency of the suit, then a decree for recovery of possession of the Schedule II land be passed in favour of the plaintiff and against the defendants. Further relief has been claimed by way of injunction restraining the defendants from transferring, selling, alienating and encumbering the suit land in any way during the pendency of the suit and restraining the defendants from changing the nature of the suit land and maintaining the status quo during the pendency of the suit.

3. Further case of the petitioner is that the family of one Dhuman Rai owned and possessed 50 decimals of land on Plot No.1657, Khata No.434, Tauzi No.5236 in Mauza Mainpura. After the death of Dhuman Rai, his widow Mostt. Sita Devi and their sons Bhagera Rai and Doman Rai for self and as guardians of their minor sons jointly sold 40 decimals out of 50 decimals of land to five persons vide five different sale deeds. The plaintiff purchased 9 ½ decimals land vide sale deed dated 30.03.1971 on payment of consideration amount of Rs.10,800/- from Mostt. Sita Devi, Bhagera Rai and Doman Rai. All the purchasers came into possession of their respective

land which they got mutated in their names and started paying rents and obtained rent receipts from the circle office. The petitioner constructed a boundary wall on the eastern side of his land and also constructed a room on north-eastern side of his land. Later on, boundary wall was damaged due to construction of the road on the eastern side of the land of the plaintiff. On 01.09.1988, the petitioner filed a petition for initiation of proceeding under Section 144 Cr.P.C. against the respondent no.2 Lalji Prasad, who had been trying to capture the land of the petitioner by collecting the building materials and digging the land and he was also trying to sell the land of the petitioner. The Sub-Divisional Magistrate passed an order in favour of the petitioner on 29.10.1988. The petition of the defendants/respondents filed on 09.12.1988 for drawing a proceeding under Section 145 Cr.P.C. was rejected vide order dated 16.05.1989. However, the defendant again filed a petition on 23.06.1989 for restoration of the proceeding under Section 145 Cr.P.C. and the Sub-Divisional Magistrate, Patna restored the proceeding. Subsequently, the proceeding was transferred to the Executing Magistrate, Sadar, Patna, who passed the order of status quo and the proceeding ended when the order was passed in favour of the respondents on 09.12.2000. Thereafter, the

petitioner filed the Title Suit No. 56 of 2001 before the learned Sub Judge, Patna.

On the other hand, the claim of the defendants/ respondents is that the land in question is their ancestral land and after selling of 40 ½ decimals of land by their ancestor, 9 ½ decimals of land remained in their possession and no land has been sold by their ancestor to the petitioner. The petitioner further claimed that despite the injunction order, the defendants/respondents constructed four shops upon the land in question and let out the same on rent. While the examination of witnesses of the plaintiff has been going on, the plaintiff filed a petition dated 14.09.2016 under Order 6 Rule 17 of the Code seeking amendment in paragraph 5 of the plaint as well as in paragraph 24 and relief portion, *inter alia*, seeking to amend the area of the land sold by the ancestors of the defendants and number of purchasers. The defendants/respondents filed their rejoinder on 30.11.2016. However, after hearing the parties, the learned trial court rejected the prayer for amendment vide the impugned order dated 27.01.2017. The said order has been assailed by the petitioner in the instant civil miscellaneous petition.

4. The learned counsel for the petitioner submitted

that the impugned order is not sustainable and the learned trial court has passed the order without appreciating the facts and circumstances of the case. The learned trial court failed to consider the changed circumstances and existence of registered sale deed in favour of the petitioner. The learned trial court has also failed to consider the fact that the respondent has based his claim and title over the land in question on the basis of forged and fabricated documents and have mutated their names in the revenue record by committing forgery and the said fact was admitted by the circle office which rectified the forgery and reported the forgery committed by the respondents. The learned counsel further submitted that the petitioner has filed the amendment petition on the basis of registered documents executed in the year 1971 and also in the changed circumstances under which the petitioner has been dispossessed by the defendant/respondent no.2. The petitioner sought to correct the actual area of the land sold by the ancestors of the defendants and the correct number of purchasers as these facts have not been rightly depicted. The total area of the land sold by the ancestors of the defendants was 47 ½ decimals and not 40 decimals as wrongly mentioned and also the total number of purchasers were seven and not five. So, no new facts were being introduced and only facts were being corrected. The learned

counsel further submitted that the learned trial court wrongly held that entirely new facts were being introduced and it would change the nature of suit. But the petitioner, who is one of the plaintiffs, has already submitted in the plaint that in case the petitioner gets dispossessed, recovery of possession be ordered in his favour. So, there was no question of change in the nature of suit by the amendment. The learned counsel further submitted that however it is not clear from the impugned order how the nature of suit would change and how the new facts are being introduced. The learned counsel further submitted that certain clarifications are being introduced and the trial is still at the stage of recording the evidence of the plaintiffs and for this reason if the amendment is allowed, the defendants would get ample opportunity to controvert the amendment sought by the petitioner/plaintiff. Thus, learned counsel submitted that the impugned order is completely illegal and is liable to be set aside.

5. However, learned counsel appearing on behalf of the respondent no.2 vehemently contended that the present civil miscellaneous petition is not maintainable and the same be dismissed. The learned counsel further submitted that the petitioner has not purchased any land from the ancestors of the

defendant/respondent no.2 and the petitioner never came into possession of the suit land having an area of 9 ½ decimals. The total land sold by the ancestors of the respondent no.2 was having an area of 40 decimals only and not 47 ½ decimals. Admittedly the area of disputed plot is 50 decimals and the ancestors of the defendant/respondent no.2 sold only 38 decimals to six persons and 2 ½ decimals was left for road and remaining 9 ½ decimals remained with the family of the respondent no.2 and he is in possession of the suit land. The learned counsel further submitted that the possession of the respondent no.2 was declared in a proceeding under Section 145 Cr.P.C. by the Executing Magistrate, Sadar, Patna. Even mutation in the name of the petitioner was cancelled vide order dated 02.11.2002 passed by the DCLR, Patna in a case filed by the respondent no.2 for cancellation of *Jamabandi* of the petitioner. The learned counsel further submitted that the petitioner has not brought the correct facts before this Court. After filing of the title suit in the year 2001, the petitioner was given a number of opportunities to conclude his evidence, but as the petitioner failed to conclude his evidence, the learned trial court vide order dated 18.02.2008 closed the evidence of the plaintiff/petitioner. However, vide order dated 13.05.2008, the

evidence of the plaintiff was reopened subject to cost and till 25.01.2024, the plaintiff did not adduce his evidence. The learned counsel further submitted that allowing the amendment at this stage would be against the provisions of law as envisaged under Order 6 Rule 17 of the Code. The petitioner has failed to show why he could not move the amendment earlier despite due diligence before the commencement of the trial. The matter has been running at the stage of evidence of the plaintiffs. Moreover, the plaintiffs have filed the suit for declaration of their right, title and possession and though the petitioner was never in possession of the suit land, still he did not seek recovery of possession and subsequently, he wants to make out a false and concocted case. The said recovery of suit land could not be permitted at this stage as it would change the nature of the suit and would seriously prejudice the defence of the defendants. The amendment sought to be made in the plaint by the plaintiff is not bonafide and no cogent explanation is forthcoming why the petition of proposed amendment could not be filed earlier before examination of the witnesses of the plaintiff or at the time of filing of the suit. Thus, learned counsel submitted that there is no merit in the present petition and the impugned order is completely valid and it is a reasoned and

speaking order and the same needs to be sustained.

6. By way of reply, learned counsel for the petitioner submitted that due to typographical error and inadvertence, the area of the land sold to different purchasers including the petitioner was left to be mentioned and the amendment is being sought to incorporate the same in paragraph 5 of the plaint. Similarly, the petitioner wants to incorporate the fact of his dispossession during the pendency of the suit and the petitioner has already sought recovery of possession in relief portion in case of his dispossession. The petitioner has not sought change in the description of the suit land and has not introduced any new facts. The amendments sought are general in nature and do not change the nature of the suit. Hence, the impugned order is not sustainable and the same be set aside.

7. I have given my thoughtful consideration to the rival submission of the parties as well as facts and circumstances of the case. It would be beneficial to look into the provisions of amendment under Order VI Rule 17 of the CPC, 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 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".

8. Evidently, the amendments have been sought to be introduced at a quite late stage of the trial. The provision is quite specific that amendment shall not be allowed after commencement of the trial. However, amendments could be allowed even after commencement of trial under certain conditions.

9. Now, commencement of trial has different connotation in the facts and circumstances of each case. The Hon'ble Supreme Court in the case of ***Baldev Singh & Ors. vs. Manohar Singh & Anr.*** reported in ***(2006) 6 SCC 498*** has held that the commencement of trial as used in proviso to Order VI Rule 17 of the Code must be understood in limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and adducing of arguments. Admittedly, the present case is at the stage of evidence of plaintiffs.

10. Further, the amendment being sought by the

petitioner in the plaint is with regard to certain factual aspects as the plaintiff/petitioner wants to make amendment in paragraph 5 of the plaint with regard to area of the sold land from 40 ½ decimals and 47 ½ decimals and further wants to introduce the name of the seven purchasers with their details though earlier name of five different persons were mentioned as purchasers in paragraph 5 of the plaint. However, paragraph 5 needs to be read in tandem with paragraph 6 of the plaint wherein the plaintiffs have made a specific case about purchase of 9 ½ decimals of land of Plot No.1657, Khata No.434, Tauzi No.5236 in Mauza Mainpura from the ancestors of the defendants vide registered sale deed dated 31.03.1971 for consideration amount of Rs.10,800/- No amendment has been sought in paragraph 6. So, the amendment sought in paragraph 5 could be said to be clarificatory and also necessary in order to decide the real controversy between the parties. But the petitioner has failed to show before this Court the reasons why the facts already in existence could not be incorporated in the original plaint or by way of amendment at the earliest occasion.

11. At the same time, I do not find much merit in the claim of the learned counsel for the respondents that the amendment sought to be incorporated would change the nature

of suit as alternative prayer has already been made for recovery of possession in case of dispossession during the pendency of the suit.

12. It has been contended by learned counsel for the respondents that a false story of dispossession has been brought by the petitioner, but the said issue could be decided only by the learned trial court in appropriate manner after appraisal of evidence of the parties.

13. In sum and substance, if the amendment is necessary for deciding the real controversy between the parties and for arriving at a just conclusion, such amendment could be allowed even at a late stage. The law on this point has been settled by various decisions of the Hon'ble Supreme Court and recently in the case of ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd***., reported in ***2022 SCC OnLine SC 1128***, the Hon'ble Supreme Court summarized the law on the point of amendment in paragraph 70 in the following manner :

> ***"70.*** *Our final conclusions may be summed up thus:*
>
> *(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred*

under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a

relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of

limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed. (xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)"

14. From the facts of the case before me, it is much apparent that the amendment has been sought after the evidence of plaintiffs started, but it is the suit of plaintiffs and if any delay is caused, ultimately the plaintiffs would be sufferer. It could not be said that allowing the amendment at this stage would not

cause prejudice to the other side. However, if the other side could be compensated in terms of cost, the amendment could be allowed. Moreover, it is for the Court to decide that such amendment would enable the court to consider the dispute between the parties in true perspective and would help it in arriving at a right decision and allow it to determine the real question in controversy. Further, if such amendment avoids multiplicity of litigation, then these amendments need to be allowed.

15. So far as the finding of the learned trial court regarding change in the nature of the suit is concerned, I think the same is misconceived. If the amendment is not allowed, it will lead to unnecessary multiplicity of litigation. The amendments also appear to be necessary for the purpose of determination of real controversy between the parties. However, for putting the defendants to undue harassment, I think the defendants should be amply compensated.

16. In the light of aforesaid discussion, I think the learned trial court committed an error of jurisdiction when it refused to allow the amendment petition and rejected the same. Hence, I do not find the impugned order dated 27.01.2017 to be sustainable in the eyes of law and, accordingly, the same is set

aside. Consequently, the application dated 14.09.2016 filed before the learned trial court is allowed subject to payment of cost of Rs. 50,000/-(fifty thousand only) to be paid by the plaintiff/petitioner to the contesting defendant/respondent on the first date before the learned trial court after passing of this judgment.

17. However, the contesting respondent will be given ample opportunity to rebut/controvert the claim of the plaintiff/petitioner sought to be brought through amendment by way of filing amended written statement/additional written statement.

18. The plaintiffs are directed to conclude their evidence within three months after the amendment in the plaint and filing of the additional written statement/amended written statement by the defendants.

19. At the same time, the learned trial court is directed to dispose of the suit on its own merit without being influenced by any of the observations made above within next nine months without granting any unnecessary adjournment to the parties since it is a matter of 2001.

20. With the aforesaid observations and directions, the instant petition stands allowed. However, It is made clear that

any observation touching upon the merits is only with regard to disposal of the present petition and I have not expressed any opinion on merits of the stand taken by both the parties in suit.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	09.05.2024
Uploading Date	12.06.2024
Transmission Date	NA