

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.673 of 2018**

1. Surendra Bahadur Singh,

2. Sushama Singh,

... .. Petitioner/s

Versus

1. Yogendra Bahadur Singh,

2. Kaushal Kumar Singh,

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arbind Nath Pandey, Advocate
For the Respondent/s	:	Mr. Pradhan Murli, Advocate with Mr. Manohar Prasad, Advocate Mr. Abhash, Advocate and Mr. Rajesh Kumar, Advocate

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

Date : 15-03-2023

Heard learned counsel for the parties.

2. The instant Civil Miscellaneous Application has been filed against the order dated 08.01.2018 passed by the learned Sub-Judge 1st Bhabhua, Kaimur in Title Suit No. 68 of 2011 by which the petition of the plaintiff / respondent No. 1 herein under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') has been allowed.



3. The brief facts of the case are that the plaintiff / respondent No.1 filed a suit bearing Title Suit No. 68 of 2011 for declaration that the plaintiff has title over the suit land and the defendant has no concern with the land in question. The basis of the suit is that the rent receipt in favour of plaintiff has been granted by the ex-landlord and return in this regard was submitted by the ex-landlord at the time of Zamindari abolition. The records of right has been prepared in the name of plaintiff during the revisional as well as consolidation proceeding and plaintiff is in possession of suit land and acquired ownership right on the suit land. However, the Halka Karamchari on 05.02.2011 refused to grant rent receipt stating that Register- II was prepared in the name of Shusama Singh (defendant No. 2) on the basis of sale deed, then the plaintiff came to know that Shyam Sundar Singh executed the registered sale deed, in favour of Rabindra Kumar Singh on 31.07.1970 which is a fraudulent document and defendant No. 1 also got excluded the name of plaintiff from the consolidation Khatiyan. Defendant No. 2 is daughter of defendant No. 1. The defendants appeared and has filed his written statement denying the claim of the plaintiff. It is stated that Jamindari was abolished on 30.12.1955 and no question arises for settlement of the land in the name of plaintiff as he was born in 1954. The mutation was



allowed in the name of defendant no. 2 and the rent receipt was granted in her name and after execution of sale deed in the year 1970, there is no concern of the plaintiff with respect to the suit land. Issues were framed and evidence of the plaintiff was closed.

4. Thereafter, the plaintiff filed an application on 11.10.2017 under Order 6 Rule 17 read with Section 151 of the C.P.C. with respect to alleged sale deed in favour of Ravindra Nath Singh & Sushma Singh as fraudulent, collusive and void document which was allowed by the trial Court.

5. Learned counsel for the petitioners has submitted that the impugned order passed by the trial Court is illegal, not proper and liable to be quashed. It is stated that the trial Court failed to appreciate that the proposed amendment was not a typographical mistake and will change the nature of the suit and the same has been filed after closing of the evidence of the plaintiff. Further, the impugned order has been passed ignoring that the plaintiff has not given any explanation with respect to due diligence. It is submitted that in the proposed amendment it is prayed to addition of relief that the sale deed executed in name of Rabindra Nath Singh and Sushama may declare illegal and void but did not disclosed the deed of execution which is of year 1970 and 2006. It is further submitted that the defendant in his written statement on



08.12.2012 given the specific assertion about the sale deed dated 31.07.1970 but despite knowledge of the same the plaintiff did not file any amendment petition within the prescribed limitation period of three years and the same cannot be done after 6 years which is barred by the law of limitation and such amendment cannot be allowed.

6. On the other hand, learned counsel for the respondents has submitted that the proposed amendment is formal in nature and will not change the nature of suit. The plaintiff has already stated about the illegal sale deed in the plaint and there was no new facts and the plaintiff has already stated the valid reason for amendment in the plaint.

7. The amendment in question is necessary for disposal of the suit. Accordingly, the trial Court has rightly allowed the amendment application with cost and there is no illegality in the impugned order.

8. Having heard the learned counsel for the parties and on perusal of materials on record and the impugned order, it appears that the petitioners has not filed rejoinder / objection to the amendment petition of the plaintiff in the trial Court. The learned trial Court found that the amendment is of formal nature and there



shall be no change in the nature of a suit. Accordingly, the amendment application has been allowed with cost.

9. The law is well settled with respect to amendment of pleading under Order 6 Rule 17 of the CPC. It is well recognized that rules of procedure are intended to be handmaid to the administration of justice. A party can not be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting *mala fide*, or by blunder, he had cause injury to his opponent which may not be compensated for by an order of costs.

10. The Hon'ble Supreme Court in **J. Samuel & Ors. Vs. Gattu Mahesh & Ors. 2012 (1) PLJR 412 (SC)** in para 12 has observed:-

“12 The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the Court so that the court has access to all the relevant information in coming to its decision. Therefore, at times, it is required to permit parties to amend their pleadings. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However, to balance the interests of the parties in pursuit of



doing justice, the proviso has been added which clearly states 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. The Hon'ble Supreme Court in case of **Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Anr.** reported in **AIR 2022 SC 4256** in paragraph no. 70 summarised the guiding principles for deciding an application under Order VI Rule 17, CPC which are as follows:

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 negated.

(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 and Ors., 2022 SCC OnLine Del 1897): (AIROnline 2022 Del 1797).

12. The Court has to decide the suit instituted before it and with respect to controversies raised in it. The object of the courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes. One cardinal principle which can be applied while allowing or rejecting an application for amendment of pleadings is that, if a fresh suit on the amended claim would be barred by limitation on the date of filing application, then the courts would not be inclined to grant such



amendments, if claim made by the applicant in the amendment application was already time barred than no purpose would be achieved by allowing the amendments which has already stood barred by the law of limitation.

13. The amendment is not permissible if the basic structure of the plaint is changed or the amendment itself is not *bona fide*.

14. It is now well settled that the Court has power to allow amendments in connection with claims which had become time-barred, if special circumstances exist and it be in the interest of justice. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time. It cannot said that a new claim made on a new basis constituted by new facts. The relief of declaration of title over the suit property was prayed for stating in paragraphs 10 to 17 with respect to the forged sale deed by defendant no. 1. The amendment sought in such circumstances should be considered by considering the plaint has to be read as a whole and not only on the basis of prayer clause. The defendant would not be called upon to answer any new case nor would be caught by surprise, nor did he has to meet a new claim set up for the first time after the expiry of the period of limitation. It is true that the amendment was filed after



the commencement of trial but that along cannot be a ground to reject the application.

15. In the facts and circumstances of the case and in the light of the law laid down by the Hon'ble Supreme Court as discussed above, the learned trial Court allowed the amendment petition on the ground that due to amendment there is no change in the nature of suit. It cannot be said that the proposed amendment would completely change the colour of the plaint. I am of the view that there is no illegality or mistake in the impugned order which requires interference by this Court under the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

16. In the result this application is hereby dismissed with no order as to costs.

(Sunil Dutta Mishra, J)

Anand Kr.

AFR/NAFR	AFR
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