

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.518 of 2018**

1. Hari Shankar Yadav,
2. Jai Prakash Yadav,
3. Sri Ram Chandra Yadav,
4. Most. Kalwa Devi,

... .. Petitioner/s

Versus

1. Dakhiya Devi (deleted vide order dated 14-11-2022),
2. Baso Yadav,

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Radha Mohan Pandey, Advocate
For the Respondent/s : Mr.

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

Date : 14-03-2023

Despite valid service of notice, no one appeared on behalf of the respondent.

2. Heard learned counsel for the petitioners.

3. The instant Civil Miscellaneous application under Article 227 of the Constitution of India has been filed for setting aside the order dated 07.02.2018 passed by learned Sub-Judge 4, Gaya, in Title Suit No. 63 of 2015 by which amendment petition dated 17.05.2017 filed by the defendants/petitioners under Order 6 Rule 17 of the Code of



Civil Procedure has been rejected.

4. The brief facts of this case are that the plaintiffs have instituted Title Suit No. 63 of 2015 for declaration that sale deed dated 18.04.2012 executed by plaintiff no. 1 in favour of defendants be declared as void and unenforceable in law as it is vitiated by fraud. The claim of the plaintiffs is that Dakhiya Devi (plaintiff no. 1) is an illiterate *Pardanashin* lady from whom signature on blank paper were taken and registered sale deed dated 18.04.2012 was executed by means of fraud and thus she challenged the legality of the said registered sale deed. Petitioners who are defendants in the suit appeared and filed their joint written statement denying the claim of the plaintiffs and prayed to dismiss the suit with cost. The defendants claimed that Dakhiya Devi executed the said sale deed in favour of defendants after receiving the entire consideration amount in which witness is her son namely Satendra Yadav. The defendants when came to know that inadvertently instead of step son with respect to Satendra Yadav son has been incorporated into their written statement which requires to be corrected, they filed amendment petition dated 17.05.2017 for amendment of their written statement in relevant paras against which the objection was filed by the plaintiffs.



5. The learned Trial Court rejected the amendment petition filed by the petitioners/defendants. Hence, this miscellaneous application has been filed.

6. Learned counsel for the petitioners has submitted that the learned Trial Court has without assigning any valid reason rejected the amendment petition of the petitioners. It is submitted that the objection of the plaintiffs was that there is no provision that the written statement should be allowed to be amended by making out a case of withdrawal of admission which is not true legal proposition. He has submitted that there is no question of any admission but it is necessary to bring on record the actual facts before the Court and further submitted that it is settled law that in written statement even the defendants can take inconsistent plea. Further it is also settled law that amendment of written statement are being considered liberal than that of the amendment in the plaint as such the impugned order is not sustainable in the eye of law. Further, he has submitted that the trial is still to commence and the proposed amendment which is formal in nature cannot be said to be withdrawal of admission. Further, it is submitted that the proposed amendment will not change the nature of the suit and also no prejudice would be cause to the plaintiff and rejection of



amendment petition will cause irreparable loss and injury to the petitioners.

7. Having heard the learned counsel for the petitioners and considering the material available on record and the impugned order, it appears that the Trial Court rejected the amendment petition stating that the petition is not maintainable without assigning any reason whatsoever.

8. The objection of the respondents is that earlier in the written statement the defendants have stated that Satendra Yadav was the son of plaintiffs but now they are making out a case that she has a step son who is the son of second wife of Mundrika Yadav and thus the same cannot be allowed as the same is the withdrawal of admission in the written statement

9. On the other hand, the submission on behalf of petitioners is that allowing the necessary amendment could not amount to the withdrawal of admission contained in the written statement since the amendment sought to be elaborated in the amended written statement had their genesis and existing defence in the original written statement.

10. The principles of law with respect to amendment of pleading under Order 6 Rule 17 CPC is well settled. A far more liberal approach is to be adopted while



considering the amendment in the written statement as distinguished from the amendment in the plaint.

11. The Hon'ble Apex Court in case of **Sushil Kumar Jain vs. Manoj Kumar (AIR 2009 SC 2544)** has observed that in the case of an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.

12. The conspectus of the provision of Order 6 Rule 17 C.P.C. it is apparent that the emphasis is on the trial of the lis on merits and for the said purpose the amendment in the pleadings has been permitted for determining the real questions in controversy between the parties.

13. In **Rajesh Kumar Aggarwal v. K.K. Modi, (2006) 4 SCC 385** the Hon'ble Supreme Court observed that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

14. The Law 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 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 that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs.

15. In the context of an application for amendment under Order 6 Rule 17 C.P.C. the Hon'ble Apex Court in **Prem Bakshi v. Dharam Dev, (2002) 2 SCC 2** observed that it is almost inconceivable as to how mere amendment of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They would only serve advance notice to the other side as to the plea, which a party may take up. Hence, we cannot be envisaged where amendment of pleadings, whatever be the nature of such an amendment, would even remotely cause failure of justice or irreparable loss to any party.



16. The Hon'ble Supreme Court in considering the scope and ambit of proviso to Order 6 Rule 17 CPC in the case of **Chander Kanta Bansal v. Rajinder Singh, (2008) 5 SCC 117 (AIR 2008 SC 2234)** observed as follows:

“.... The proviso limits the power to allow amendment after the commencement of trial but grants discretion to the court to allow amendment if it feels that the party could not have raised the matter before the commencement of trial in spite of due diligence. It is true that the power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment”.

17. In the present case, the amendment sought for in written statement was before the commencement of trial and to bring the true facts before the court and would not cause irreparable loss to the plaintiffs and the trial court ought to have allowed the amendment petition.

18. In view of the facts and circumstances of the



case, considering the legal provisions as discussed above and in the interest of justice, I find merit in the present application and accordingly it is allowed by setting aside the impugned order dated 07.02.2018. The amendment petition dated 17.05.2017 filed by defendants/petitioners under Order 6 Rule 17 is allowed subject to payment of cost of Rs. 2,000/- by the defendants to plaintiffs. The defendants must deposit the cost in the court below within four weeks from the date of receipt/production of a copy of this order and the plaintiffs thereafter shall be entitled to withdraw the same.

19. The writ application is accordingly, allowed with aforesaid directions.

(Sunil Dutta Mishra, J)

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AFR/NAFR	AFR
CAV DATE	16.02.2023
Uploading Date	14.03.2023
Transmission Date	

