

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.674 of 2017**

Abdush Shakur S/o Md. Sadique, resident of Village- Lilhaul, Tole- Harpur,
Police Station- Singhiya, District- Samastipur.

... .. Petitioner

Versus

Ganga Prasad Thakur Son of Sri Nathuni Thakur, Resident of Village-
Lilhaul, Tole- Harpur, Police Station- Singhiya, District- Samastipur.

... .. Respondent

Appearance :

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| For the Petitioner | : | Mr. Suraj Narain Yadav, Advocate Mr. Ranjit Kumar Yadav, Advocate Ms. Reena Kumari, Advocate |
| For the Respondent | : | Mr. Sada Nand Roy, Advocate Mr. Manoj Kumar, Advocate |

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 18-12-2023

Heard learned counsel for the petitioner as well as learned counsel for the respondent on the point of admission and I intend to dispose of this petition at the stage of admission itself.

02. The instant petition has been filed by the petitioner against the order dated 31.01.2017 passed by the learned Munsif, Rosera in Title Suit No. 59 of 2000 by which the learned court below rejected the amendment petition filed by the plaintiff-petitioner dated 11.08.2016.

03. The case of the plaintiff/petitioner is that he filed a title suit bearing Title Suit No. 59 of 200 before the learned Munsif, Rosera seeking relief of direction to the defendant/respondent to handover the original registration



receipt and the original sale-deed for the suit land which the plaintiff agreed to purchase for consideration amount of Rs. 14,000/- from the defendant. The plaintiff paid Rs. 6,000/- before the registration of sale-deed and the rest amount was to be paid later on. The registration of sale-deed was made on 10.08.1998 and thereafter the plaintiff paid Rs. 8,000/- to the defendant and asked for original registration receipt but the defendant told him that it got misplaced. When the defendant did not give original registration receipt to the plaintiff, then the plaintiff called for a *Panchayati* and in the *Panchayati*, *Panchas* decided to give Rs. 1,000/- more to the defendant, which was paid by the plaintiff to the defendant. Still, the defendant did not handover the original receipt to the plaintiff.

04. The defendant appeared and contested the claim of the plaintiff. The defendant admitted the payment of Rs. 6,000/- but he refuted that the sale price of the suit land was Rs. 14,000/-. The defendant claimed that the consideration money was Rs. 30,000/- against which Rs. 6,000/- was paid and Rs. 24,000/- was to be paid after registration on making endorsement on the back of the registration receipt. The defendant further claimed that the plaintiff did not pay him the balance amount of Rs. 24,000/- and in the *Panchayati*, the



Panchas decided to return Rs.6,000/- to the plaintiff with direction to execute the deed of cancellation of sale-deed dated 10.08.1998. The plaintiff was refunded Rs. 6,000/- from the defendant and the defendant on 10.01.2000 executed the cancellation deed.

05. Learned counsel for the petitioner submits that the plaintiff/petitioner filed an application for amendment in his plaint and the said application was rejected by the learned Munsif, Rosera vide order dated 31.01.2017. Learned counsel further submits that the said rejection order is against the provisions of law. The amendment can be made at any stage of trial. The learned court below went on the premises that the plaintiff did not give any reason for bringing the amendment and also about his due diligence. The learned court below also went on the premises that by way of amendment, the plaintiff wants change the nature of suit. The learned counsel, however, submitted that the plaintiff has not made any attempt to bring on record any new fact rather the amendment sought is in the light of the statement of defendant made in paragraph-8 of his written statement. It was not necessary for the defendant to file additional written statement in the suit or to lead evidence in the suit even if the amendments were allowed. At the same time,



there was no chance of delay in disposal of the suit because of the proposed amendments, which are formal in nature. It would not change the nature of the suit and would not cause any prejudice to the defendant. Learned counsel for the petitioner further submits that the learned trial court committed irregularity in passing the impugned order. The impugned order is erroneous in law and facts and suffers from material irregularity.

06. Learned counsel appearing on behalf of the respondent vehemently opposes the contention made on behalf of the petitioner. Learned counsel for the respondent submits that the plaintiff/petitioner was having all knowledge about the fact which he sought to be brought on record through amendment after 16 years. The orders of cancellation of sale deed was dated 10.01.2000 and the only purpose of the plaintiff/petitioner in seeking the amendment is to prolong the suit and to pressurize the defendant. The case of the plaintiff/petitioner has got no merit and the plaintiff wants to linger on the case by any means. It is also apparent from the petition for amendment filed before the learned trial court that no reasons have been mentioned in it. Further, nothing has been submitted regarding any due diligence made by the plaintiff rather there is admission on part of the plaintiff that everything



was in his knowledge and still he did not bring it on record.

07. Perused the records.

08. Order-7 Rule 17 of the Code of Civil Procedure provides as follows:-

“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.”

09. In the amendment petition brought by the plaintiff/petitioner, it is very much obvious that the same has been filed only to linger on the proceeding and *malafide* is writ large on the face of the petition. Nothing has come on record to show why the petitioner did not file his amendment petition prior to the conclusion of the evidence. Admittedly, the matter was running at the stage of argument when the amendment was



sought. Further, the amendments which are sought to be brought on record at Para-6 of the petition, which read as under:-

“(i) To add the following lines at the end of para-11 of the plaint:-

"The defendant had no right to execute the cancellation deed dated 10.1.2000 before the Sub-Registrar, Rosera. The aforesaid deed of cancellation, Ganga Prasad Thakur Vs Abdul Sakur is illegal, fabricated, without any right, in-effective and not binding upon the plaintiff."

(ii) To add para 11(Ka) after the para-11 of the plaint:-

"If the Court form its opinion that the plaintiff failed to prove that Rs.8,000/- was not paid to the defendant then direction be given to plaintiff to pay Rs.8,000/- to the defendant."

(iii) In the second line of para-13 of the plaint the word Rs.500/- be struck off and in its place Rs.14,000/- be substituted. And thereafter, in that para of the plaint it may be added that the plaintiff pays Rs.1900/- ad-volerm Court-fee.

(iv) Para-14(Ka) be deleted and its place the following be substituted:-

"To declare the right, title and possession of the plaintiff over the suit land Schedule-1 on the basis of the purchase of the said land."

(v) The sub-paragraph (Kha) and (Ga) of para-14 of the plaint shall be made as para (Ga) and (Gha).

(vi) After para-14(Ka) the para 14(Kha) be inserted -

"To declare that the cancellation



deed dated 10.1.2000 is illegal, without any right, in-effective, void and not binding upon the plaintiff."

10. The first amendment sought to be brought on record is regarding declaration of a document which was of the year 2000. It is circumventing the limitation through back-door. Further, the plaintiff/petitioner has sought recovery of Rs. 8,000/- which he has not earlier sought and same is also a time barred claim.

11. No doubt, amendments in pleadings can be allowed at any stage of the case, but there are certain conditions. Recently, the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr***, reported in ***2022 SCC OnLine SC 1128***, in Paragraph-70, has given certain guidelines to deal with the matter. It reads as under:-

"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)”

12. The case of the petitioner is squarely covered by Paragraph-70 (iv) of the guidelines in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr.*** (supra).

13. Under the aforementioned facts and circumstances, I do not find any merit in the instant petition and, accordingly, it is dismissed.

(Arun Kumar Jha, J)

Ashish/-

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