IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1868 of 2018

==========

Sita Ram Sah, Son of Late Ram Kishun Sah, resident of Mohalla- Mokimpur, Begusarai, Tola- Mungeriganj, Ward No. 33, P.S.- Sadar Begusarai, District - Begusarai.

... ... Petitioner/s

Versus

Prem Paswan, Son of Late Sukho Paswan, resident of Mohalla – Gachhi Tola, Begusarai, P.S.- Sadar, Begusarai, District - Begusarai.

... ... Respondent/s

==========

Code of Civil Procedure---O. 6, R. 17; O. 47 R. 1; section 114, 152--- Amendment of Pleadings after passing of the Final Decree---petition to set aside order rejecting review application filed by Petitioner to review the rejection of his amendment application by which petitioner wanted to correct the typographical mistake in boundaries mentioned in suit property.

*Findings: words "at any stage of the proceedings" in O. 6, R. 17 is wide enough to include proceedings pending at the execution stage also--- description of the boundaries of the suit plot is an accidental slip and typographical error which went undetected till the process of execution and the learned trial court ought to have taken this fact into consideration while passing the orders on the amendment petition of the plaintiff/petitioner--- it is well settled that a successful plaintiff should not be deprived of the fruits of the decree for some error creeping in the decree---learned trial court did not give any reasoning as to how the change in boundary will change the nature of the suit land and, in what manner, it will cause prejudice to other side--- formal types of amendment, which may not require any detailed enquiry should be allowed in the interest of justice---impugned orders set aside---petition allowed. (**Para 6, 9, 11, 12, 15**)*

*AIR 1976 Delhi 56, (2007) 13 SCC 421, (2009) 11 SCC 308 …..**Relied Upon**.*

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1868 of 2018

==========

Sita Ram Sah, Son of Late Ram Kishun Sah, resident of Mohalla- Mokimpur, Begusarai, Tola- Mungeriganj, Ward No. 33, P.S.- Sadar Begusarai, District - Begusarai.

... ... Petitioner/s

Versus

Prem Paswan, Son of Late Sukho Paswan, resident of Mohalla - Gachhi Tola, Begusarai, P.S.- Sadar, Begusarai, District - Begusarai.

... ... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr.Chandra Mauli Chaurasia, Advocate
For the Respondent/s : Mr.

==========

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 18-03-2025

Heard learned counsel for the petitioner.

2. Despite valid service of notice, none has entered appearance on behalf of the respondent.

3. The petitioner is aggrieved by the order dated 05.09.2018 passed by the learned Munsif, Begusarai in Misc. Case No. 02 of 2018 whereby and whereunder the learned Munsif has rejected the aforesaid miscellaneous case filed on behalf of the plaintiff/petitioner under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure (hereinafter referred to as ‘the Code’) to review the order dated 28.11.2017 passed by the learned Munsif, Begusarai in Title Eviction Suit No. 07 of 2009 whereby and whereunder amendment petition dated 02.12.2016 filed on behalf of the plaintiff/petitioner under

Order 6 Rule 17 read with Section 152 of the Code has been rejected. The petitioner is also aggrieved by the aforesaid order dated 28.11.2017.

4. The learned counsel for the petitioner submits that the plaintiff/petitioner filed Title Eviction Suit No. 07 of 2009 on 27.06.2009 before the learned trial court against the defendant/respondent for a decree of eviction with respect to the suit land mentioned in Schedule 1 of the plaint as well as other reliefs. In the aforesaid title eviction suit, summons were issued to the defendant/respondent by the learned trial court, but he did not appear even after receipt of summons. Thereafter, registered notice was also issued to the defendant/respondent and even substituted service by way of publication through newspaper has been made for appearance of the defendant/respondent in the suit, but he did not appear, as such, the said eviction suit was fixed for *ex-parte* hearing by the learned trial court. Thereafter, the learned Munsif vide judgment dated 02.02.2011 and decree dated 18.02.2011 decreed the suit in favour of the plaintiff/petitioner against the defendant/respondent with direction to the defendant/respondent to vacate the suit premises within sixty days and also to hand over the delivery of possession of the suit premises to the plaintiff/petitioner and the

reliefs sought for by the plaintiff/petitioner with regard to arrears of rent of the suit premises mentioned in Schedule-II of the plaint has been discarded by the learned trial court.

Learned counsel further submits that when the defendant/respondent/judgment debtor did not comply the direction of the learned trial court passed in the judgment dated 02.02.2011 and decree dated 18.02.2011, the plaintiff/decree-holder/petitioner filed Title Execution Case No. 08 of 2011 before the learned trial court on 25.06.2011 for execution of the decree dated 18.02.2011 passed in Eviction Suit No. 07 of 2009. Thereafter, the learned executing court proceeded with the execution case and even after issuance of summons, notices and substituted service of notice by way of publication through newspaper, the defendant/judgment debtor/respondent did not appear in the execution proceeding. Accordingly, the execution case was fixed for *ex-parte* hearing vide order dated 03.06.2013. Thereafter, on 22.06.2013, the judgment debtor/respondent appeared in Execution Case No. 08 of 2011 and filed a petition under Order 21 Rule 106 r/w Section 151 of the Code and another petition under Order 21 Rule 26 & 29 r/w Section 151 of the Code to object the execution proceeding. After hearing the parties, the aforesaid both petitions were dismissed by the

learned executing court vide order dated 27.11.2015. Thereafter, the learned executing court issued writ of delivery of possession after depositing cost etc. by the decree holder/petitioner in the execution case. After that, the authorized person/*Nazir* went to the suit premises on 23.10.2016 for effecting the delivery of possession, but the same could not be effected due to error in mentioning the boundary of the suit premises and the writ of delivery of possession was returned by the *Nazir* to the learned executing court on 10.01.2017.

The learned counsel further submits that on 23.10.2016, when the plaintiff/decree holder/petitioner came to know about the typographical errors in the plaint and consequent error in the judgment and decree of the learned trial court, he filed a petition dated 02.12.2016 in the court of learned Munsif in Title Eviction Suit No. 07 of 2009 under Order VI Rule 17 r/w Section 152 of the Code for amendment in the plaint with regard to aforesaid typing error. After hearing the learned counsel for the petitioner on the aforesaid amendment petition, the learned trial court rejected the same vide order dated 28.11.2017 finding it not maintainable. Thereafter, the plaintiff/petitioner filed a review application on 26.02.2018 for reviewing the order dated 28.11.2017 before the learned trial

court under Section 114 r/w Order 47 Rule 1 of the Code. The said review application was registered as Misc. Case No. 02 of 2018, which was also rejected by the learned trial court vide order dated 05.09.2018. The order dated 28.11.2017 and order dated 05.09.2018 are under challenge before this Court.

The learned counsel further submits that the impugned order dated 05.09.2018 is neither sustainable nor maintainable either on facts or in law as the learned Munsif failed to consider while passing the impugned order that due to typographical mistake or error the word '*Niz*' has been typed in the eastern boundary of the suit plot in place of the word 'road' in the eastern boundary. Similarly, the word 'road' has been wrongly typed in the western boundary of the suit plot in place of the word 'Niz house of the plaintiff' in the western boundary of the suit land, which is correct one and the aforesaid typing mistakes or errors in the plaint and consequently in the decree could not be detected by the plaintiff/petitioner earlier due to inadvertence and the same came into the knowledge of the petitioner at the time of delivery of possession and on account of this error, the delivery of possession could not be effected.

The learned counsel further submits that there is no willful negligence on the part of the plaintiff/petitioner in

approaching the learned Munsif for amendment of the plaint and consequently in the decree with respect to typing errors in the boundary of the suit premises and the proposed amendment sought for by the plaintiff/petitioner is essential in the interest of justice which is formal in nature so that the petitioner may be able to get the fruits of the decree passed in his favour by executing the delivery of possession on the suit premises.

The learned counsel further submits that the proposed amendment will not change the nature of the suit nor it will cause any prejudice or injustice to the defendant/respondent. The learned counsel further submits that the learned Munsif in his order dated 28.11.2017 passed in Title Eviction Suit No.07 of 2009 has given erroneous and baseless finding that the changes in boundary will change the nature of the suit land which *prima facie* appears to be a misleading finding as the learned Munsif had not mentioned in his order dated 28.11.2017 even a single word as to how the nature of the suit land will be changed and, in what manner, it will cause prejudice to other side.

The learned counsel further submits that as per the report of the *Nazir* mentioned in the amendment petition, two points are evident and obvious, firstly the suit plot is the same

and is not being changed or substituted because the defendant/respondent has been found to be in possession over the suit land and secondly, there is some error in its boundary due to which the delivery of possession could not be effected.

The learned counsel further submits that the learned trial court though noted that the boundary in the sale deed for the suit land is the same which is being sought to be incorporated through amendment in the plaint, still under some misconception it did not allow the amendment petition. The learned counsel further submits that if the plaint contains a boundary different from the boundary mentioned in the sale deed, natural inference is that an inadvertent error had taken place while drafting the plaint and the error is just a typographical error and a clerical mistake which was allowed to subsist due to the inadvertence of the plaintiff/petitioner as well as his counsel and ought to be incorporated at the first instance. If this fact came to the knowledge of the plaintiff/petitioner at the stage of execution, he has rightly brought this fact to the notice of this Court and the amendment is neither going to change the nature of the suit or nature of the property or would not be against the evidence recorded in the case. On all accounts, there was no occasion for the learned trial court to refuse the amendment.

The learned counsel further submits that learned Munsif failed to exercise the jurisdiction vested in him by law under Section 114 read with Order 6 Rule 17 and Order 47 Rule 1 read with Section 152 of the Code while passing the impugned order in view of the fact that the delivery of possession could not be effected due to petty clerical mistakes in the two sides of boundary of the suit land. The learned counsel further submits that the learned Munsif failed to appreciate that a case for review has been made out since the error is apparent on the face of record.

In support of submission, learned counsel for the petitioner refers to the decisions of this Court in the cases of ***Anirudh Singh Vs. Krishna Bihari Singh,*** reported in ***1985 PLJR 797*** and ***Puja Mishra Vs. Ram Dutt Mishra,*** reported in ***1991 (2) PLJR 604.***

Thus, on the strength of aforesaid decisions, learned counsel submits that both the impugned orders dated 28.11.2017 and 05.09.2018 are otherwise illegal, perverse and without jurisdiction and, as such, the same be quashed.

5. Perused the records.

6. From the record, it transpires that by the proposed amendment, the petitioner wants to correct the typographical

mistake in boundaries mentioned in suit property of Schedule-I of the plaint as the word 'निज वादी' has been typed in the eastern boundary of the suit plot in place of the word 'सड़क' . Similarly, the word 'सड़क' has been wrongly typed in the western boundary of the suit plot in place of the word 'निज वादी का मकान'. Consequently in the decree, the aforesaid mistakes have also been occurred.

7. Now, the question before this Court is as to whether after passing of the final decree whether the jurisdiction of the court remains to allow such amendment or ceased with the disposal of the suit?

8. Order VI Rule 17 of the Code provides for amendment in pleading and it reads as under:-

> *"17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings 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:"*

9. The aforesaid provision makes it clear that the words "at any stage of the proceedings" is wide enough to include proceedings pending at the execution stage also.

10. In the case of ***Ex-Servicemen Enterprises Limited versus Sumey Singh*** reported in ***AIR 1976 Delhi 56*** Hon'ble Delhi High court has held in paragraphs 22, 23 & 24 as under :

> *"22… The expression "at any stage" in its literal and actual meaning means without limitation either in frequency of duration or length of time. It is not a restrict expression. The general purpose and scope of a statute where this expression is used may show that the expression has not a limited or controlled meaning. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case.*
>
> *23. "At any stage" will include execution. Execution is a stage in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation, there are various stages. Execution is one of them. It registers a degree of advance towards the goal which the litigant has set out for himself.*
>
> *24… Amendment for including the relief of possession can be allowed "on such terms as may be just". These words also point in the same direction. Justice was the dominant idea in the mind of the legislature at the time it was enacting the proviso. It knew, one would presume, of the difficulties which a litigant might face by omitting a relief to which he may be entitled and which the section says he must ask for. The proviso says the*

court "shall" allow the amendment. The words are emphatic and imperative".

11. Further, the suit was decreed. Naturally the decree would contain the description of the suit property as furnished by the plaintiff/petitioner. Since the boundary of the suit property was wrongly mentioned in the plaint, the same boundary came to be mentioned in the decree. Now the description of the property in the sale deed is what the plaintiff/petitioner wants to bring through the amendment in the plaint and, for this reason, no malafide could be imputed to the plaintiff/petitioner. Even the bare perusal of the amendment sought, the plaintiff seeks interchange of word 'own' and 'road' in the eastern and western boundary. Therefore, I am of the opinion that the description of the boundaries of the suit plot is an accidental slip and typographical error which went undetected till the process of execution and the learned trial court ought to have taken this fact into consideration while passing the orders on the amendment petition of the plaintiff/petitioner.

12. In the impugned orders, the learned trial court recorded its finding that the change in boundary will change the nature of the suit land. But, he did not give any reasoning as to

how the nature of the suit land will be changed and, in what manner, it will cause prejudice to other side. It is well settled that after all a successful plaintiff should not be deprived of the fruits of the decree for some error creeping in the decree. In the body of the plaint, the suit lands have been sufficiently described. Only because of wrong mentioning the boundaries of suit land, as afore-stated, the same, by itself, may not be a ground to deprive the plaintiff/decree-holder/petitioner from the fruit of the decree.

13. The Hon'ble Supreme Court in the case of ***Niyamat Ali Molla v. Sonargon Housing Coop. Society Ltd.***, reported in ***(2007) 13 SCC 421*** in Paragraph 25 held as under:

> *"**25.** It is not a case where the defendants could be said to have been misled. It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner. It is also not a case where by reason of an amendment, one property is being substituted by the other. If the court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. The statements contained in the body of the plaint have sufficiently described the suit lands. Only because some blanks in the schedule of the property have been left, the*

same, by itself, may not be a ground to deprive the respondents from the fruit of the decree…… We, therefore, are of the opinion that only because the JL numbers in the schedule were missing, the same by itself would not be a ground to interfere with the impugned order."

14. Further, the Hon'ble Supreme Court in the case of ***Peethani Suryanarayana & Anr. Vs. Repaka Venkata Ramana Kishore & Ors,*** reported in ***(2009) 11 SCC 308,*** in Paragraph Nos. 9, & 10 held as under:

*"**9.** The factual matrix involved in the matter, as noticed hereinbefore, is not in dispute. It is also not in dispute that in the plaint the suit land was described as Revisional Survey No. 165. The village became a part of the municipality, by reason whereof a new town survey was assigned to the suit land being Town Survey No. 463. However, in the plaint and consequently in the preliminary decree as also in the final decree, Town Survey No. 462 was mistakenly mentioned, which was evidently a typographical mistake.*

***10.** The power of the court to allow such an application for amendment of the plaint is neither in doubt nor in dispute. Such a wide power on the part of the court is circumscribed by two factors viz. (i) the application must be bona fide; (ii) the same*

should not cause injustice to the other side; and (iii) it should not affect the right already accrued to the defendants."

15. In the light of the discussion made here-in-before and placing reliance on the aforesaid decisions, I hold that formal types of amendment, which may not require any detailed enquiry should be allowed in the interest of justice. Thus, I am of the considered opinion that the learned trial court has committed error of jurisdiction in refusing to exercise its jurisdiction vested in it and, in my view, there would also be a failure of justice if the said amendment is not allowed. Hence, the impugned orders dated 05.09.2018 and 28.11.2017 are set aside. Consequently, amendment petition dated 02.12.2016 is allowed.

16. With the aforesaid observations and directions, the instant petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.03.2025
Transmission Date	NA