

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1032 of 2017

Vijay Kumar Singh, Son of Rajendra Singh, Resident of Village- Faridpur,
Post Bakri Supail, P.S. Raja Pakar, District Vaishali.

... .. Petitioner/s

Versus

1. Jai Prakash Singh, son of late Jagdeo Singh, Resident of Mohalla- Sahjadpur Andarkila, Town and P.S. Hajipur, District- Vaishali.
2. Smt. Gayatri Devi, wife of Chandrma Dubey Azad @ C.D. Azad, Resident of Mohalla- Mahajan Toli, Hajipur, presently resident of Mohalla Katra, P.S. and P.O. Hajipur Town, District Vaishali.
3. Chandrama Dubey Azad @ C.D. Azad, son of Late Shivdayal Dubey, Resident of Mohalla- Chaudhary Mobarali Katra, P.S. and P.O. Hajipur, District Vaishali.
4. Harishchandra Mishra.
5. Shambhu Mishra.
6. Jaidev Mishra.
7. Krishnamurari Mishra.
8. Laloo Mishra.
Respondent Nos. 4 to 8 are Sons of Late Badri Mishra, Resident of Mohalla- Mahajan Toli, Town and P.S. Hajipur, District Vaishali.
9. Pramod Kumar Singh, son of Ramishwar Singh, Resident of Mohalla- Sahjadpur Andar Killa, Town and P.S. Hajipur Nagar, Post Hajipur, District- Vaishali.
10. Smt. Meena Sinha, wife of Ashok Kumar Sinha.
11. Ashok Kumar Sinha, son of Late Narayan Prasad,
Respondent Nos. 10 and 11 are Resident of Village Post P.S.- Manshurchak, District- Begusarai.
12. Smt. Reshma Devi wife of Bindeshwari Rai, Resident of Sabbalpur Nabel Tola, Post and P.S.- Sonpur, District Saran.
13. Ram Pravesh son of Late Aksharwat Ojha, Resident of Village- Rampur Bakhra, P.S. Lalganj, presently at Bhagwanpur, Post Jarangrampur, District- Vaishali.
14. Most. Shanti Devi wife of Late Nandlal Singh, Resident of Mohalla- Jadua, Ward No. 35, Post Jadua, P.S. Hajipur, District Vaishali.
15. Ramawtar Singh.
16. Rajan Kumar Singh, Respondent Nos. 15 and 16 are Sons of Late Jagdeo Singh, Resident of Mohalla- Sahjadpur Andar Killa, Town and P.S. Hajipur Nagar, Post Hajipur, District- Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gyanendra Kumar Shukla, Advocate



For the Respondent/s : Mr. Shashikant Mishra, Advocate
Mr. Munish Kumar, Advocate
Ms. Minakshi Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 23-09-2024

Heard learned counsel for the petitioner and learned counsel for the respondent 1st set.

2. The instant petition has been filed under Article 227 of the Constitution of India against the order dated 02.03.2017 passed by the learned Sub Judge-II, Vaishali at Hajipur in Title Suit No. 1134/2013 whereby and whereunder the learned trial court allowed the petition dated 10.02.2017 filed for amending the plaint under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

3. The learned counsel for the petitioner submits that the respondent no. 1 is the plaintiff and the petitioner is one of the defendants before the learned trial court. Title Suit No.1134/2013 has been filed by the plaintiff/respondent no.1 for cancellation of sale deeds executed by defendant 1st set in favour of defendant 2nd set with regard to the suit land. After evidence of the plaintiff was closed and matter was fixed for evidence of defendant/petitioner, the plaintiff/respondent filed an application on 10.02.2017 under Order 6 Rule 17 of the Code for making certain amendments in the plaint in the following manner :



- i) That the Plaintiff / Respondent in the first page of the plaint firstly prayed for adding his at present residential address as "Mohalla Krishnapuri, Bagmani, Post Hajipur, P.S. Hajipur Gaon, District Vaishali".*
- ii) That for deleting Khata No. 62 in para 7 of the Plaint and on its place adding 88.*
- iii) That in para 12 of its 07th line after 16 Dhur for adding Lagan / Malgujari.*
- iv) That for adding after para 13 that during pendency of the Suit the Defendant / Petitioner submitted some documents that suggest the Plaintiff/Respondent had filed a case in Survey Office which is not correct and the fact is that Plaintiff/Respondent had not filed any case nor he had put signature or executed Vakalatnama in anyone favour; hence, the decision of the Survey Office has over binding effect no Plaintiff/Respondent.*
- v) That for adding in the last line of para 15 of the plaint that after perusal of the cadastral survey it is evident from its remark column of advance payment of the year 1892 that the land in question was put on bharna of Rs. 24/- and Plaintiff/Respondent was taking half of its shares from the bharna holder and thus it proves the plaintiff/respondent is in possession over the suit land.*
- vi) That for adding in the fourth line of Para 19 after kewala Khata No. 277 and thereafter Khata No. 270 Kheshra Number.*
- vii) That it is further prayed that in the genealogical table the name of son of Girdhari Singh as Ratan Singh may be deleted and on its place Ratan Mahto may be added and further in para 22 of the plaint in its second line for deleting after Kumar Singh say word which is wrongly typed.*

4. The learned counsel for the petitioner further



submits that a rejoinder to the said application was filed and the defendant/petitioner raised a number of objections. The foremost objection was that amendment petition was filed at the belated stage since the deposition of plaintiff/respondent has already been completed and the evidence of defendant/petitioner was being recorded. All the facts which were sought to be brought on record by way of amendment were in the knowledge of plaintiff/respondent and he was well aware of it. The learned counsel further submits that the plaintiff even wants to change his address and it seems he has deliberately furnished a wrong address at the time of filing of the suit. The learned counsel further submits that with regard to the case filed by the plaintiff in Municipality, the defendant/petitioner has made the submission in his reply on 09.11.2015 and specifically indicated in paragraph 47 that the plaintiff/respondent during municipal action filed a case which was dismissed after spot inspection and the said order was brought on record on 12.04.2016. Despite coming to know about the said fact, the plaintiff did not take any steps immediately and waited till his evidence was closed.

5. The learned counsel for the petitioner further submits that in the light of aforesaid facts, it is apparent that the plaintiff himself does not want to dispose of his case. The



learned counsel relies on the decision of the Hon'ble Supreme Court in the case of *Basavaraj v. Indira & Ors.* reported in *(2024) 3 SCC 705*, wherein the Hon'ble Supreme Court quoted the case of *M. Revanna v. Anjanamma* reported in *(2019) 4 SCC 332* and held that Order 6 Rule 17 of the Code prevents an application for amendment after the trial has commenced unless the Court comes to the conclusion that despite due diligence the party could not have raised the issue. The Hon'ble Supreme Court further held that the burden is on the party seeking amendment after commencement of trial to show that in spite of due diligence such amendment could not be sought earlier. It is not a matter of right. The Hon'ble Supreme Court further held that though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bonafide or malafide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.

6. The learned counsel for the petitioner next submits that order of the learned trial court is a non-speaking order and amendment has been allowed by passing a cryptic order.

7. Thus, learned counsel for the petitioner submits



that the impugned order is not sustainable and the same may be set aside.

8. The learned counsel appearing on behalf of the respondent no.1 submits that there is no infirmity in the impugned order and the same has been passed after due consideration of the fact. The learned counsel further submits that amendments are routine in the nature and the amendments do not change the nature of the suit or do not cause prejudice to the defendant/petitioner. By the said amendments, the plaintiff/respondent has sought to include his present address apart from correction in typographical error in mentioning khata number and certain clarification and at the same time making correction wherever it has been found to be wrongly mentioned in the plaint whether in the khesra number or the name of the ancestors. So far as claim about plaintiff filing the case before the survey department is concerned, it has been clarified that no such case was filed by the plaintiff.

9. I have considered the rival submission of the parties and the facts and circumstances of the case.

10. From perusal of the impugned order, it is evident that the said order is bereft of any reason. The amendment application has been allowed without consideration of the facts of the amendment application of the objections



raised against the said amendment. It is completely non-speaking order and has been passed by merely stating that the documents were perused and, thereafter, the application was allowed subject to some cost. Such order could not be allowed to stand since no reasons have been given.

11. The Hon'ble Supreme Court in the case of ***Raj Kishore Jha vs. State of Bihar & Ors.*** reported in ***AIR 2003 SC 4664***, has held that the reason is the heartbeat of every conclusion.

12. Further, the Hon'ble Supreme Court in the case of ***Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors.*** reported in ***(2010) 9 SCC 496***, has held that reasons in support of decisions must be cogent, clear and succinct. A pretense of reasons or rubber-stamp reasons is not to be equated with a valid decision-making process.

13. The decision in ***Kranti Associates Private Limited (supra)*** of the Hon'ble Supreme Court stresses upon the importance of reasoned judicial orders and have discussed elaborately why reasoning is the soul and heart of the justice. Therefore, I have no hesitation in holding that the order of the learned trial court is without recording the reasons in support of conclusion arrived at and failure to record the reasons would make the orders unsustainable. Not recording the reasons in fact



amounts to denial of justice whether it is by an administrative authority, quasi judicial body or a judicial body. The aforesaid authorities could not pass orders without assigning reasons in support of their conclusion more so if it is an order by a judicial authority.

14. In such view of the matter, without going into the merits of the case, the impugned order dated 02.03.2017 passed in Title Suit No. 1134/2013 by the learned Sub Judge-II, Vaishali at Hajipur is set aside. The matter is remanded to the learned trial court for passing a reasoned and speaking order afresh on the application dated 10.02.2017 filed by the plaintiff/respondent within a period of one month from the date of receipt/production of a copy of this order.

15. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.09.2024
Transmission Date	NA

