

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1634 of 2017

Daya Nand Singh S/o Late Dukh Haran Singh Resident of Village- Rampur,
P.S.- Chhatta pur, District- Supaul Bihar.

... .. Petitioner/s

Versus

1. Suresh Singh
2. Bhupendra Singh
3. Mahendra Singh
4. Dharmendra Singh
5. Bhushan Singh
6. Ratendra Singh All are sons of Late Dhanush dhari Singh null
7. Sunita Kumari D/o Late Dhanush dhari Singh All Sl. No. 1 to 7 are the residents of Village- Rampur, P.O.- Lalpur, Via- Surpatganj, P.S.- Chhattapur, District- Supaul Bihar.
8. Shyamwati Devi D/o Late Dhanush dhari Singh W/o Kailash Singh Resident of Village and P.O.- Bauraha, Via and P.S.- Karjain Bazar, District- Supaul Bihar.
9. Shosita Devi D/o Late Dhanush dhari Singh W/o Akhlaish Singh Resident of Village and P.O.- Hari raha, Via and P.S.- Karjain Bazar, District- Supaul Bihar.
10. Kavita Devi D/o Late Dhanush dhari Singh W/o Amitabh Bachhan Singh Resident of Village- Suniyari, P.O.- Chikni Via- Kursi Kanta, P.S.- Sonamani Godown, District- Araria. All Sl.No. 1 to 10 are the substituted heirs of original defendant No. 1 - Late Dhanush dhari Singh.
11. Shiv Shankar Singh S/o Late Sitaram Singh Resident of Village- Rampur, P.S.- Chhatta pur, District- Supaul Bihar.
12. Manu Lal Singh S/o Late Sitaram Singh Resident of Village- Lalpur, P.S.- Chhattapur, District- Supaul Bihar.
13. Pappu Jha S/o Late Sobha Nath Jha Resident of Village- Rampur, P.S.- Chhatta pur, District- Supaul Bihar.
14. Baby Devi D/o Late Sobha Nath Jha W/o Anil Jha Resident of Village and P.O.- Tilathi, Via- Surpat Ganj, P.S.- Chhata pur, District- Supaul Bihar.
15. Bindi Devi D/o Late Sobha Nath Jha W/o Late Gulab Jha Resident of Village- Beldara, P.O.- Lalpur, Via- Ganpat ganj, P.S.- Pipara, District- Supaul Bihar.
16. Sinu Devi D/o Late Sobha Nath Jha W/o Arvind Jha Resident of Village- Dorara, P.O. and P.S.- Lakshmania Via- Balua Bazar, District- Supaul Bihar.
17. Doli Devi D/o Late Sobha Nath Jha W/o Manoj Jha Resident of Village and P.O.- Chunni, Via- Surpat Ganj, P.S.- Chhattapur, District- Supaul Bihar.
18. Most. Nelu Devi W/o Amar Nath Jha
19. Sumit Jha



20. Amit Jha Both Sons of Late Amar Nath Jha, All are Residents of Village- Rampur, P.S.- Chhattapur, District- Supaul Bihar.
21. Soni Devi D/o Late Amar Nath Jha W/o Uday Jha Resident of Village and P.O.- Fatehpur, Via and P.S.- Narpatganj, District- Araria.
22. Shakti Nath Jha S/o Late Digambar Jha Resident of Village- Rampur, P.S.- Chhattapur, District- Supaul Bihar.
23. Jyoti Jha
24. Bhakti Jha
25. Jeev Nath Jha
26. Rati Nath Jha
27. Arun Jha All sons of Late Digambar Jha All are Residents of Village- Lalpur, P.S.- Chhattapur, District- Supaul Bihar.
28. Most. Moti Devi W/o Late Indra Mochan Jha
29. Satish Jha
30. Santosh Jha Both sons of Late Indra Mochan Jha All are Residents of Village- Lalpur, Via- Surpatganj, P.S.- Chhattapur, District- Supaul Bihar.
31. Bacchi Devi D/o Late Indra Mochan Jha W/o Moti Lal Jha Resident of Village and P.O.- Khawaspur, Via- Forbesganj, P.S.- Simraha, District- Araria Bihar.
32. Munni Devi D/o Late Indra Mochan Jha W/o Babu Thakur Resident of Village and P.O.- Jadiya, Via- Triveniganj, P.S.- Jadiya, District- Supaul Bihar.
33. Anita Devi D/o Late Indra Mochan Jha W/o Chunnu Jha Resident of Village- Haripur Ghurna, P.O. and P.S.- Ghurna Bazar, Via- Nawabganj, District- Araria Bihar.
34. Most. Suchita Devi W/o Late Ramanand Jha
35. Keshav Jha S/o Late Ramanand Jha Both Residents of Village- Lalpur, Via- Surpatganj, P.S.- Chhattapur, District- Supaul.
36. Laxmi Devi D/o Late Ramanand Jha W/o Kishore Jha Resident of Village and P.O.- Madhubani, Via- Pratapganj, P.S.- Balua Bazar, Disgtrict- Supaul Bihar.
37. Rekha Devi D/o Late Ramanand Jha Resident of Village and P.O.- Fatehpur, Via- Forbesganj, P.S.- Narpatganj, District- Araria.
38. Aarti Devi D/o Late Ramanand Jha Resident of Village and P.O.- Fatehpur, Via- Forbesganj, P.S.- Narpatganj, District- Araria.
39. Kirtya Nand Jha S/o Late Krishna Valabh Jha Resident of Village- Lalpur, P.S.- Chhattapur, District- Supaul.
40. Tara Nand Jha
41. Durga Nand Jha
42. Ajay Jha
43. Vijay Jha Both S/o Late Uma Jha
44. Deepu Jha S/o Late Neetu Jha All are residents of Village- Jainagar, P.S.-



Pratapganj, District- Supaul.

45. Dilip Jha
46. Pradeep Jha
47. Vinod Jha
48. Ashok Jha All sons of Late Dukh Mochan Jha All residents of Village- Rampur, P.S.- Chhattapur, District- Supaul.
49. Dilip Jha
50. Sanjay Jha Both S/o Late Shiv Narayan Jha Both residents of Village- Rampur, P.S.- Chhattapur, District- Supaul.
51. Bachan Safi
52. Supho Safi Both S/o Late Bholu Dhobi
53. Manjoor Safi S/o Late Lochan Safi
54. Hanif Safi
55. Mashruddin Safi
56. Islam Safi All S/o Late Taveej Safi
57. Azmat Safi S/o Late Masraf Dhobi Matopha
58. Dabudh Safi
59. Samsuddin Safi Both S/o Late Jaseem Safi
60. Badri Safi
61. Mustaq Safi
62. Azim Safi All S/o Late Masraf Dhobi
63. Ramtul Safi
64. Karamat Safi
65. Garbul Safi All S/o Late Jasmat Dhobi All are residents of Village- Rampur, P.S.- Chhattapur, District- Supaul.
66. Mehbood Dhobi
67. Sehbood Dhobi Both S/o Late Asarfi Dhobi Both residents of Village- Rampur, P.S.- Chhattapur, District- Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Nath Jha, Advocate
For the Respondent/s : Mr. Sudish Kumar, Advocate
Mr. Saket Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 17-09-2024

Heard the learned counsels for the respective parties.



02. The present petition has been filed under Article 227 of the Constitution of India against the order dated 19.07.2017, passed by the learned Sub Judge-IV, Supaul in Title Suit No. 29 of 2009, whereby and whereunder the petitioner's petition dated 30.01.2017 filed under Section 148 and 151 of the Code of Civil Procedure, 1908 (for short 'the Code') has been rejected.

03. Learned counsel for the petitioner submits that on 30.09.2014, the plaintiff, who is petitioner in the present case, filed a petition under Order 6 Rule 17 of the Code for amendment in the plaint due to subsequent event. Vide order dated 17.09.2015, the amendment petition of the plaintiff was allowed. But, unfortunately the order of amendment could not be carried out in the plaint by the plaintiff. Thereafter, on 24.02.2016, the plaintiff filed a petition under Order 6 Rule 18 of the Code seeking extension of time for allowing him to carry out the order of amendment passed on 17.09.2015. The learned trial court allowed the petition filed under Order 6 Rule 18 of the Code on 26.04.2016 at the cost of Rs. 100/-. Still, the amendment could not be carried out in the plaint by the plaintiff. Afterwards, on 30.01.2017, the plaintiff again filed a petition under Section 148 and 151 of the Code seeking permission of



the trial court to carry out the amendment for which order has already been passed on 17.09.2015. However, the said petition of the petitioner was dismissed by the learned trial court vide order dated 19.07.2017, which is under challenge before this Court in the present petition.

Learned counsel further submits that no doubt there has been delay and laches on part of the petitioner but the petitioner has explained the circumstances under which the amendment could not be carried out in the plaint. The petitioner is a poor person and has to go outside the State for earning his livelihood and for this reason, the petitioner could not carry out the amendment in the plaint in terms of order dated 17.09.2015. Learned counsel further submits that if the petitioner is not allowed to carry out the amendment, the subsequent event could not be incorporated in the plaint and the petitioner would be seriously prejudiced on this account. Further the subsequent event was with regard to dispossession from the property and hence in case of refusal to carry out amendment relief of recovery of possession would be barred.

04. Learned counsel appearing on behalf of the respondent nos. 1 to 12 vehemently opposes the submission made on behalf of the petitioner. Learned counsel for the



respondents submits that no satisfactory explanation has been given for not carrying out the amendment in the plaint in terms of order dated 17.09.2015. Learned counsel further submits that delay and laches on part of the petitioner should not be condoned as due to the negligent approach of the petitioner, the matter has been pending since year 2009.

05. Having regard to the submission made on behalf of the parties and considering the facts of the case, it is clear that the petitioner is completely at fault in not carrying out the amendment in terms of order dated 17.09.2015. Order VI Rule 18 of the Code provides that if no time is prescribed, any amendment should be carried out within fourteen days from the date of the order. It appears the petitioner moved before the learned trial court, firstly under Order VI Rule 18 of the Code and thereafter, under Sections 148 and 151 of the Code and he has been unsuccessful while moving his second petition. However, considering the fact that the endeavour of the court should be towards the determination of real controversy between the parties and procedural law should not be allowed to hamper the course of justice, in case no vested rights have been accrued in favour of the other side, the trial court should normally allow such petition.



06. Therefore, without further going into the factual aspects of the case, the impugned order dated 19.07.2017 passed by the learned Sub Judge-IV, Supaul in Title Suit No. 29 of 2009 is set aside and the petition dated 30.01.2017 filed by the petitioner is allowed subject to payment of cost of Rs. 10,000/- to be paid to the contesting respondents on the first date before the learned trial court on receipt/production of a copy of this order.

07. With the aforesaid observation, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2024
Transmission Date	NA

