

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.194 of 2016**

Paras Manjhi son of Late Bhola Manjhi Resident of Village- Madhopur,
Police Station- Barauli, District- Gopalganj.

... .. Petitioner/s

Versus

1. Akhileshwar Prasad son of Kanhaiya Lal Prasad
2. Bankelal Prasad son of Satyanarayan Prasad
3. Lalu Mahto son of Jeevnandan Mahto
4. Sita Ram Manjhi son of Thakur Manjhi
5. Bhokal Manjhi son of Doma Manjhi
6. Kabiraj Miyan son of Deen Ali Miyan
7. Bal Khila Chaudhary son of Tapeswar Raut
8. Cheet Lal Prasad son of Ram Chandra Sah
9. Raja Mahto son of Dharbharan Mahto
10. Mohan Dhobi
11. Salauddin Miyan
12. Islam Miyan Respondent nos. 10 to 12 sons of Bengali Manjhi
13. Deolal Mahto son of Alga Mahto
14. Brij Mohan Prasad son of Anchchelal Prasad All resident of Village-
Madhopur, Police Station- Barauli, District- Gopalganj.
15. Babu Ram Thakur son of Ram Lal Thakur Resident of Village- Raghapur,
Police Station- Jamo Bazar, District- Siwan.
16. Lal Bihari Manjhi son of Late Jagdeo Manjhi
17. Janak Manjhi son of Late Mangal Manjhi Both resident of Village-
Madhopur, Police Station- Barauli, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Najmul Hoda, Adv.
For the Respondent/s : Mr. Onkar Nath, Adv.
Mr. Binod Prasad Singh, Adv.

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

Date : 03-07-2025

Heard learned counsel for both the parties and I intend
to dispose of the present civil miscellaneous petition at the stage



of admission itself.

2. The petitioner is aggrieved by the order dated 21.01.2016 passed in Title Suit No. 407 of 2004 by learned Sub Judge VI, Gopalganj whereby and whereunder the amendment petition filed by the defendants has been allowed.

3. Briefly stated, the facts of the case are that petitioner and respondents 2nd set/respondent nos. 16-17 are plaintiff before the learned trial court and they have filed a suit seeking declaration of their right, title and possession over Schedule II land as mentioned in the plaint and for partition of Schedule I land and also for a decree of permanent injunction. The defendants/respondents 1st set appeared and filed their written statement contesting the suit. On 14.12.2015 the defendants filed an amendment application seeking amendment in their written statement. After hearing the parties, the learned Sub Judge-VI, Gopalganj vide order dated 26.01.2016 allowed the amendment application which is under challenge before this Court.

4. Learned counsel for the petitioner submits that the impugned order has been passed without giving any opportunity to the plaintiffs/petitioner to file any rejoinder. The case record was earlier pending before the Court of learned Sub Judge-III,



Gopalganj but by the administrative order of learned District Judge, Gopalganj, the suit was transferred to the Court of learned Sub Judge-VI, Gopalganj and the plaintiff was unaware about this fact. In absence of the plaintiff, before the newly transferred Court, the defendants filed the amendment application. When the plaintiff/petitioner came to know about the transfer of the case and filing of amendment application, he sought adjournment from the learned trial court and filed a rejoinder on 27.01.2016 but came to know that the order was already passed by the learned Sub Judge-VI, Gopalganj on 26.01.2016. Learned counsel further submits that the impugned order is perverse and illegal. The learned trial court was not justified in allowing the amendment as the amendments are not of formal nature and would change the nature of claim of the defendants against the plaintiff. Further not providing an opportunity of filing rejoinder to the amendment petition is unjust, improper and violative of principles of natural justice. Therefore, the order passed by the learned trial court is nothing but an abuse of the process of Court and had occasioned in failure and miscarriage of justice. Learned counsel further submits that moreover by way of amendment, the defendants have sought to withdraw admission already made in the written



statement and the same cannot be allowed. Thus, the learned counsel submits that the impugned order be set aside and the amendment application of the defendants be dismissed.

5. Learned counsel appearing on behalf of the defendants/respondent 1st set vehemently contends that there is no infirmity in the impugned order and the learned trial court, after consideration of facts and circumstances, properly allowed the amendment application. The amendments are most formal in nature and it is the settled law that amendments in written statement are allowed more liberally than the amendments in plaint. Learned counsel further submits that there is no withdrawal of any admission and rather some typographical mistakes had been sought to be corrected in the written statement. Therefore, the learned trial court has not committed any error in passing the impugned order and if the amendments were not allowed, there would have been contradiction and confusion in the pleadings of the defendants. Amendments were just and proper and have been rightly allowed by the learned trial court.

6. Perused the record.

7. It has been contended during arguments by learned counsel for the petitioner that there is clear admission of the



defendants that plaintiffs are descendants of Sawarath Dusadh. According to them, Moti Dusadh has three sons namely Padarath Dusadh, Sawarath Dusadh and Mani Dusadh but by amendment they are now withdrawing this admission and now they are saying that ancestor of the plaintiff was Sadarath Dusadh who is not son of Moti Dusadh. Now this amendment has been sought in first line of paragraph no. 16. However, on perusal of paragraph nos. 13 and 14, it appears that the defendants have claimed that Moti Dusadh had three sons namely Padarath Dusadh, Sawarath Dusadh and Mani Dusadh thereafter it has been submitted by the defendants that Sawarath Manjhi had two sons Ramlal Manjhi and Ramjiwan Manjhi. Now in paragraph no. 16 the defendants in unamended written statement has submitted that Sawarath Dusadh has two sons namely Shyamlal Manjhi and Doma Manjhi. Apparently, the persons in paragraph nos. 14 and 16 could not be the same as the sons of Sawarath Manjhi are different. So Sawarath Dusadh/Manjhi could be father of either Ramlal Manjhi and Ramjiwan Manjhi or Shyamlal Manjhi and Doma Manjhi. So there appears some typographical mistake and according to the defendants this typographical error is in paragraph no. 16. So, it cannot be said to be withdrawal of admission. Similarly, in 2nd



line of paragraph no. 25, the name of Ramchandra Dusadh is sought to be corrected as Ramyad Dusadh. Now, in subsequent lines of paragraph no. 25, everywhere Ramyad Dusadh had been mentioned and averment has been made about Ramyad Dusadh by denying the claim of the plaintiffs made in paragraph no. 9 wherein also the name of Ramyad Dusadh had been mentioned and not of Ramchandra Dusadh. Therefore, this amendment also pertains to correction of typographical error. Further in paragraph no. 36 there is an averment about purchase of some property by way of registered sale deed by plaintiff no. 1 but there is no such claim of plaintiffs in their plaint and the amendment pertains to some documents which is a registered sale deed and the defendants want to change plaintiff no. 1 with defendants no. 1. So this amendment is also not withdrawal of any admission or changing the nature of suit. Further, the last amendment is in paragraph no. 37 of the written statement, which appears to be clarificatory in nature. Therefore, the amendments sought by the defendants could not be said to be withdrawal of some admission or being *malafide* in nature or causing prejudice to the plaintiff.

8. The Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders (P) Ltd.***, reported in ***2022 SCC OnLine SC 1128***, has summarized the law



on the point of amendment. Paragraph 25 and 70 are extracted hereinafter for better appreciation of law on this point:

“25. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not



be made a ground for rejecting the application for amendment of plaint or written statement. (See [South Konkan Distilleries & Anr. v. Prabhakar Gajanan Naik & Ors.](#), (2008) 14 SCC 632)

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)”

9. So far as claim of the plaintiff/petitioner about not being given opportunity to file rejoinder is concerned, the same is of no consequence because when the record has been transferred it was transferred for both the parties if the plaintiff was not diligent, he cannot blame the Court for his plight. Moreover, the plaintiff was given opportunity of hearing as it appears from the impugned order dated 21.01.2016 and so the



plaintiffs could not have any qualms on this account.

10. Therefore, having regard to the facts and circumstances and discussion made hereinabove, I do not find any infirmity in the impugned order dated 21.01.2016 and hence the same is affirmed.

11. Accordingly, finding no merit in the present petition, the same is dismissed.

12. However, the learned trial court will grant ample opportunity to the plaintiffs to rebut/controvert the amendment sought to be incorporated by the defendants.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
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