

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1991 of 2017**

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- 1.1. Phuliya Devi W/o Late Ramchandra Yadav, Presently R/o village- Kalna, Ward No. 5, P.O. and P.S. Basopatti, District- Madhubani.
- 1.2. Kari Devi, W/o Late Ramchandra Yadav, Presently R/o village- Kalna, Ward No. 5, P.O. and P.S. Basopatti, District- Madhubani.
- 1.3. Runa Devi, D/o Late Ramchandra Yadav, Presently R/o village- Kalna, Ward No. 5, P.O. and P.S. Basopatti, District- Madhubani.
- 1.4. Poonam Devi, D/o Late Ramchandra Yadav, Presently R/o village- Kalna, Ward No. 5, P.O. and P.S. Basopatti, District- Madhubani.
- 1.5. Sitesh Kumar Yadav, S/o Late Ramchandra Yadav, Presently R/o village- Kalna, Ward No. 5, P.O. and P.S. Basopatti, District- Madhubani.
- 1.6. Nitesh Yadav, S/o Late Ramchandra Yadav, Presently R/o village- Kalna, Ward No. 5, P.O. and P.S. Basopatti, District- Madhubani.
2. Maheshwar Yadav
3. Ram Balak Yadav Both 2 & 3 Sons of late Chaudhary Yadav All Resident of Village- Harlakhi Tola, Ranipatti, P.O.- Harlakhi, P.S. Harlakhi, District- Madhubani.

... .. Petitioner/s

Versus

2. Binod Yadav S/o Late Ganpat Yadav R/o Village- Kalna, P.S. Harlakhi, District- Madhubani.
3. Paltu Yadav Son of Late Satya Yadav, Resident of Village and P.O.- Basopatti, P.S. - Harlakhi, District - Madhubani.
4. Umesh Yadav Son of Late Satya Yadav resident of Village and P.O.- Basopatti, P.S. Harlakhi, District- Madhubani.
5. Mithilesh Yadav S/o Binda Yadav Resident of Village- Mauzapatti, P.O. Bisaul, P.S.- Harlakhi, District- Madhubani.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ratanakar Jha, Advocate  
For the Respondent/s : Mr. Manoj Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH**

**ORAL JUDGMENT**

**Date : 23-03-2026**

Heard learned counsel for both the parties.

2. The present Civil Miscellaneous Application  
has been filed for quashing the order dated 14.06.2017  
passed by learned Sub-Judge, Benipatti in P.S. Case No. 09



of 2005, by which the learned Sub-Judge has dismissed the amendment petition filed by the petitioners under Order VI, Rule 17 of the Code of Civil Procedure.

3. It is submitted by learned counsel for the petitioners that Partition Suit No. 9 of 2005 has been filed by the plaintiffs/respondents for partition of suit properties in which defendants/petitioners had filed amendment petition dated 30.11.2016 against which rejoinder has already been filed by the plaintiffs/respondents and lastly after hearing both the parties, the learned Trial Court has rejected the said amendment petition by the impugned order against which the present Civil Miscellaneous Petition has been filed.

4. Learned counsel for the petitioners/defendants further submits that the proposed amendment is only explanatory regarding previous partition and petitioners want to add the schedule of respective parties through which the suit properties was partitioned earlier in his W.S. He further submits that proposed amendment does not change the nature of the suit. He also submits that the learned Sub-Judge has not considered the fact that proposed



amendment is necessary for determining the real question in controversy between the parties.

5. On the contrary, learned counsel appearing on behalf of the respondents/plaintiffs submits that after commencing the trial, the defendants/petitioners cannot be permitted to amend their written statements.

During course of hearing, reliance was placed on a judgment reported in **(2024) 3 SCC 705 (Basavaraj versus Indira and Others)** and another judgment of Hon'ble Apex Court reported in a **Civil Appeal arising out of Special Leave Petition (Civil) No. 30324 of 2019**. The relevant paragraph of the said judgment is extracted hereunder:-

*“11.2. Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in **Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.**, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-*



*(i) 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.*

*(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.*

*(iii) Amendments, while generally should be allowed, the same should be disallowed if -*

*(a) 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.*

*(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)*

*(c) The amendment completely changes the nature of the suit,*

*(d) The prayer for amendment is malafide,*

*(e) By the amendment, the other side should not lose a valid defence.*

(iv) Some general principles to be kept in mind are

*(I) The court should avoid a hyper-technical approach: ordinarily be liberal, especially when the opposite party can be compensated by costs.*

*(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new*



*approach.*

*(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.*

*12. The question that we have to consider, in the above backdrop is whether the High Court fell in error in allowing the application seeking leave to amend pleadings, in contravention of the statutory language.*

*13. By way of the amendment, what is sought to be done is, to question the validity of the Will, on the basis of which, the defendant sought to have the suit dismissed, while also expanding the scope of adjudication of the suit to include movable property. It has to be then, demonstrated that- (a) determination of the genuineness of the Will is the necessary course of action in determining the issues inter se the parties;*



*and (b) given the finding of the court below that the application was presented post the commencement of the trial, it could not have been, despite due diligence, presented prior to such commencement.*

*14. Be that as it may, the overarching Rule is that a liberal approach is to be adopted in consideration of such applications. [See also: **Sanjeev Builders (supra); Rakesh Kumar Agarwal v. Rajmala Exports Pvt. Ltd.; Usha Balasaheb Swami & Ors. v. Kiran Appaso Swami & Ors.; B.K. Narayana Pillai v. Parmeswaran Pillai & Anr.10]**”*

6. On the anvil of the aforesaid principle laid down by the Hon’ble Apex Court, when I peruse the facts of this case and the proposed amendment, it clearly transpires that proposed amendment is just an explanatory to the previous partition as earlier pleaded by the defendants/petitioners and it does not change the nature of the suit and defendants/petitioners’ evidence have not been



completed, rather it has just begun and thereafter respondents/plaintiffs' evidence is to be adduced in this case by the order of Court.

7. So the proposed amendment appears to be essential for proper and complete adjudication of the suit. Hence, the proposed amendment is allowed at the cost of Rs. 5000/-(Five Thousands) payable to the respondents/plaintiffs.

8. Accordingly, the order dated 14.06.2017 passed by learned Sub-Judge, Benipatti in P.S. Case No. 09 of 2005 is hereby set aside.

9. The respondents/plaintiffs are given an opportunity that if they wish to add or amend certain facts with respect to above pleaded facts in Written Statement, they may do so.

10. Accordingly, Civil Miscellaneous No. 1991 of 2017 stands allowed.

Shageer/-

**(S. B. Pd. Singh, J)**

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