

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.336 of 2024**

Shipu Devi D/o Late Ganesh Singh, W/o Sri Dipnarayan Singh, resident of Village Parsa, P.O. Bhour, P.s. Khaira, District-Jamui.

... .. Petitioner/s

Versus

Piyush Kumar @ Piyush S/o Shri Manoj Kumar Singh, resident of Village-Hansdih, P.S. Jamui, District-Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Sinha, Advocate
Ms. Seema, Advocate

For the Respondent/s : Mr.Prabhat Ranjan Singh, Advocate

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

Date : 26-11-2024

The record has been taken up on mentioning being made on behalf of the respondent.

2. Heard learned counsel for the parties and I intend to dispose of the petition at the stage of admission itself.

3. Learned counsel for the petitioner submits that the petitioner is aggrieved by the order dated 01.02.2024 passed by learned Additional District Judge-2, Jamui in Probate Case No. 29 of 2022, whereby and whereunder the learned Additional District Judge has allowed the petition dated 18.12.2023 filed by the respondent under Order 6 Rule 17 of the Code of Civil Procedure (in short 'the Code') for addition of certain facts in paragraph 8 of the probate petition.

Learned counsel further submits that the impugned order is not sustainable in view of the fact that the said



amendment has been allowed after commencement of trial as three witnesses have been examined in the matter. After coming to know about the status of the petitioner, the respondent/probate petitioner moved an application for amendment in order to fill up the gap in his case. Learned counsel has relied upon a decision of Hon'ble Supreme Court in the case of *Vidyabai & Ors. Vs. Padmalatha & Ors.* passed in *Civil Appeal No. 7251 of 2008*, wherein the Hon'ble Supreme Court has held that the amendment should not be allowed once trial has commenced. Learned counsel further submits that, moreover, the amendment is not relevant to the facts in the probate case and even when the amendment has been allowed, the petitioner was not given any opportunity to file additional/amended written statement. Thus, the learned counsel submits that the order allowing the amendment needs to be set aside.

4. Learned counsel appearing on behalf of the respondent vehemently contends that there is no infirmity in the impugned order and the same does not need any interference. Learned counsel further submits that paragraph 8 of the probate petition shows that the amendment sought is only for clarifying the fact mentioned in paragraph 8 and the need arose as the vendors of the petitioner filed written statement making some averment



prejudicial to the case of the petitioner. Learned counsel further points out that the probate petitioner has already mentioned as the present petitioner being issueless and her husband marrying for the second time. However, the fact about the present petitioner still residing in her matrimonial home was sought to be brought by way of amendment and this fact gets supported from the affidavit of the petitioner as well her Aadhar card. These documents show the present petitioner has been continuously residing in in her matrimonial home even after second marriage of her husband. Learned counsel further submits that need for amendment arose as the present petitioner continued selling the property which is also part of the property mentioned in the Will for which probate case has been filed. Even the second para of the amendment only clarify this fact that the present petitioner received certain property from her father. In support of his case, learned counsel referred to a decision of Hon'ble Supreme Court in the case of *State of Bihar and Others Vs. Modern Tent House and Another*, reported in (2017)8 SCC 567. Para 8 of the judgment reads as under:-

“We have perused the amendment application filed by the appellants. We find that firstly, the proposed amendment is on facts and the



appellants in substance seek to elaborate the facts originally pleaded in the written statement; secondly and in other words, it is in the nature of amplification of the defence already taken; thirdly, it does not introduce any new defence compared to what has originally been pleaded in the written statement; fourthly, if allowed, it would neither result in changing the defence already taken or will result in withdrawing any kind of admission, if made in the written statement' fifthly, there is no prejudice to the plaintiffs, if such amendment is allowed because notwithstanding the defence or/and the proposed amendment, the initial burden to prove the case continues to remain on the plaintiffs; and lastly, since the trial is not yet completed, it is in the interest of justice that the proposed amendment of the defendants should have been allowed by the courts below rather than to allow the defendants to raise such plea at the appellate stage, if occasion so arises."

Learned counsel submits that even by incorporating the



amendment, no prejudice is going to be caused to the present petitioner and the amendment does not introduce any new fact. The burden of proof remains with the probate petitioner. So commencement of trial is not a hurdle in allowing the amendment petition. Learned counsel further referred to a decision of Three Judges Bench of Hon'ble Supreme Court in the case of **Raj Kumar Bhatia Vs. Subhash Chander Bhatia**, reported in (2018) 2 SCC 87. Para 12 reads as under:-

“This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In Sadhana Lodh vs. National Insurance Co. Ltd., this Court has held that the supervisory jurisdiction conferred on the



High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon which the inferior court or tribunal has passed an order. The trial court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 CPC. There was o reason for the High Court to interfere under Article 227. Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21-9-2013 that an amendment of the plaint was allowed by the trial court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the plaintiff.”

Learned counsel further submits that the amendment



can be allowed even after commencement of trial if it does not cause prejudice to other side and do not introduce any new fact or defence or cannot be said to be withdrawal of any kind of admission.

5. Having regard to the rival submission and from perusal of the record, the admitted fact is that the amendment has been introduced after commencement of trial. Order 6 Rule 17 reads as under:-

“17. Amendment of pleadings.- The Court may any 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.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The amendment after commencement of trial has been proscribed unless despite due diligence, it could be shown that the



parties could not have sought amendment prior to commencement of trial. There is no due diligence shown by the probate petitioner/respondent. However, considering the nature of amendment, and also the fact that the endeavour of the court should be towards the adjudication of real controversy between the parties and procedural lapses should not be allowed to hamper the determination of real controversy in trial and the amendment should be allowed if other side could be compensated in terms of money and on this aspect of the matter, I am inclined to interfere with the impugned order. Hence, the impugned order is affirmed subject to payment of Rs.10,000/- to the other side/present petitioner on the first date before the learned trial court. The learned trial court is directed to allow ample opportunity to the present petitioner to controvert/rebut the amendment so prayed by the probate petitioner.

6. With the aforesaid observation and direction, the present petition stands disposed of.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2024
Transmission Date	NA

