

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.353 of 2019**

Savitra Kuer Wife of Late Ganesh Pandey, Resident of Village- Karup, Post-
Babhani, P.S. Karghar, District- Rohtas.

... .. Petitioner

Versus

1. Sunil Pandey and Ors Son of Late Kishun Pandey, resident of Village-
Karup, Post- Babhani, P.S. Karghar, District- Rohtas.
2. Sushil Pandey, Son of Sunil Pandey, resident of Village- Karup, Post-
Babhani, P.S. Karghar, District- Rohtas.
3. Chhotu Pandey, Son of Sunil Pandey, resident of Village- Karup, Post-
Babhani, P.S. Karghar, District- Rohtas.
... .. Plaintiffs/Respondent 1st set
4. Murli Pandey, Son of Late Narsingh Pandey, resident of Village- Karup,
Post- Babhani, P.S. Karghar, District- Rohtas.
5. Raju Pandey, Son of Murli Pandey, resident of Village- Karup, Post-
Babhani, P.S. Karghar, District- Rohtas.
6. Birju Pandey, Son of Murli Pandey, resident of Village- Karup, Post-
Babhani, P.S. Karghar, District- Rohtas.
7. Deepak Pandey, Son of Murli Pandey, resident of Village- Karup, Post-
Babhani, P.S. Karghar, District- Rohtas.
8. Ajay Pandey, Son of Late Bachan Pandey, resident of Village- Karup, Post-
Babhani, P.S. Karghar, District- Rohtas.
9. Kanhaiya Pandey, Son of Late Bachan Pandey, resident of Village- Karup,
Post- Babhani, P.S. Karghar, District- Rohtas.
10. Ram Narayan Pandey, Son of Indrajeet Pandey, resident of Village- Karup,
Post- Babhani, P.S. Karghar, District- Rohtas.
11. Dev Shankar Pandey, resident of Village- Karup, Post- Babhani, P.S.
Karghar, District- Rohtas.
12. Dhanjee Pandey, resident of Village- Karup, Post- Babhani, P.S. Karghar,
District- Rohtas.
13. Dengar Pandey resident of Village- Karup, Post- Babhani, P.S. Karghar,
District- Rohtas.
14. Mengar Pandey, resident of Village- Karup, Post- Babhani, P.S. Karghar,
District- Rohtas.

... .. Defendants/Respondent 2nd set

Appearance :

For the Appellant/s : Mr.Sanjay Kumar Tiwary
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 20-06-2019



Heard learned counsel for the petitioner.

2. This application has been filed by the petitioner under Article 227 of the Constitution of India challenging the order dated 26.11.2018 passed by the learned Sub Judge VI, Sasaram, Rohtas in Title Suit No. 336 of 2017 whereby he has allowed the petition filed by the plaintiffs-respondent 1st set under Order VI Rule 17 of the Code of Civil Procedure (for short 'CPC') for making certain amendments in the plaint.

3. Learned counsel appearing for the petitioner submitted that the petitioner is a co-sharer and family member of the plaintiffs and as such she has a right in the suit property being widow of late Ganesh Pandey, but the plaintiffs have filed a petition on 13.03.2018 under Order VI Rule 17 of the CPC before the trial court for amendment in para 9 of the plaint, which has been allowed by the trial court vide impugned order whereby the petitioner is shown as sister-in-law of the defendant Murli Pandey. He submitted that the contention made in the amendment petition is absolutely wrong as the petitioner is legally wedded wife of Late Ganesh Pandey and she is not sister-in-law of defendant Murli Pandey. The amendment sought by the plaintiffs was mischievous and the court below ought to have rejected the same.



4. On perusal of the materials available on record, I find that the amendment petition was filed by the plaintiffs at the initial stage even before the commencement of the trial.

5. Order VI Rule 17 of the CPC provides that the Court may at 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. The proviso to the said rule provides that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that despite all due diligence the parties could not have raised the matter before commencement of trial.

6. Thus, it would be evident that the first part of Rule 17 of Order VI gives discretionary power to the Court to allow or disallow the application for amendment in the pleading. In the second part, the word shall makes it incumbent upon the court to allow such amendment application if the amendment is necessary for the purpose of determination of real controversy between the parties.

7. The purpose and object of Order VI Rule 17 of the CPC is essentially to avoid multiplicity of litigation. Since the trial



has not yet commenced and the petitioner will have ample opportunity to lead evidence and cross-examine the witnesses examined on behalf of the plaintiffs, I am not inclined to interfere with the order impugned in exercise of power under Article 227 of the Constitution of India.

8. The application is dismissed.

(Ashwani Kumar Singh, J)

pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.06.2019
Transmission Date	

