

IN THE COURT OF SUB JUDGE I, JAGDISHPUR, BHOJPUR AT ARA

Title Suit Case No.: 208/1997

CIS No.: 208/1997

Date of Order or Proceeding	Order with the Signature of the Court	Office action taken with
21.02.2023	Both sides have filed their hazri. Today the record is fixed for hearing on plaintiff's petition dated 23.12.2022 filed under Order VI Rule 17 & Section 151 of Code of Civil Procedure and rejoinder dated 31.01.2023. Heard Ld. Advocate of both sides and perused the case record. From the perusal of case record it transpires that plaintiff has submitted that the present suit was dismissed in default therefore, he has not filed the amendment petition earlier. Further plaintiff submitted that in the paragraph no. 7 of the plaint in which the details relating to the title deed has been given in which due to mistake of Typist, few facts have not been mentioned therefore, some facts in the para 7 and thereafter new para 7A may be added. Further plaintiff submitted that some facts need to be added in para no. 9 of plaint as well as in the relief para no. 1 and new para no. 2 may be added in relief. Further plaintiff submitted that the required amendment is of formal nature from which nature of the case will not be changed and earlier plaintiff has sought the relief of declaration nature but due to amendment in the relief, plaintiff will have to pay advolorem Court fee and prayed for allowing the amendment petition. Defendant has opposed the said petition through his rejoinder dated 31.01.2023 in which defendant has submitted that the said petition is not maintainable and time barred and deliberately plaintiff has filled the wrong petition on the basis of wrong facts to harass the defendants and delay the proceeding of case. Further defendant submitted that plaintiff has filed the amendment petition after the laps of 27 years. Defendant has submitted that plaintiff has filed the suit for the cancellation of sale deed which executed by Ram Daso Kunwar in favour of Kamla Devi W/O Sihashan Thakur on dated 13.07.1994. Further defendant submitted that in the year 2008 plaintiff has filed to ceiling cases bearing no. 05/2008-09 and 6/2008-09 against the defendant in the court of Deputy Collector Land Reform, Jagdishpur in which order has been passed in favour of defendants against which plaintiff has filed the appeal in the court of Collector, Ara and thereafter in the Court of Commissioner, Patna. Thereafter plaintiff preferred an appeal in the Hon'ble Court Patna and the Hon'ble Court, Patna passed the judgment in favour of defendants. Further defendant submitted that the filing of ceiling case shows that plaintiff has admitted the validity of defendant's sale deed and plaintiff has filed this case by concealing the fact relating to writ filled in the	

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Cont. 21.02.2023	Hon'ble Court. Further defendants submitted that due to amendment, new case make out and defendant will have to file new written statement and finally prayed for dismissing the petition. From the perusal of case record, it transpires that this is case of year 1997 and identified as an oldest case of this court. Further from the perusal of case record, it transpires that no evidence produced by either side as yet and this is a case of year 1997. From the perusal of case record, it also transpires that plaintiff has prayed for the amendment in the para 7 and 9 of the plaint and for the addition of new para 7A in the plaint and plaintiff has also prayed for adding new line in the relief in para 1 alongwith adding the new relief. From the perusal of case record, it transpires that plaintiff prayed for the adding the facts relating to the Title Suit NO. 172/1994 and plaintiff has also taken the plea of Section 22 of Hindu Succession Act 1956 and plaintiff prayed for adding new relief relating to the declaration to the title and confirmation of possession and in case of dispossession, the relief related to the recovery of possession by appointment of the Commissioner. During the course of hearing Ld. Advocate of plaintiff has also produced the judicial precedents passed by Hon'ble Apex Court in "Life Insurance Corporation of India Versus Sanjeev Builders Private Limited" reported in PLJR 236(SC) 2022 (4) in which it has been hold by the Hon'ble Apex Court that "there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed and it is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation-the power to allow an amendment is wide and may be appropriately exercised at any stage in the interest of justice, notwithstanding the law of limitation." Plaintiff has also refereed the case Ramesh Kumar Agarwal Versus Rajmala Exports Private Limited reported in 2012 (3) PLJR 4 (SC) in which it has been hold by the Hon'ble Apex Court that "it is clear that while deciding the application for amendment oridnarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment can not be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hypertechnical	
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