

COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE, KATIHAR

Misc. Case No. 17 of 2024

Shankar Yadav & Another

Versus

Dinesh Yadav & others

Sl. No. & Date of order	ORDER WITH SIGNATURE	Office notes as to action (if any) taken on order
<u>42</u> 04.06.2026	Heard the learned counsel for both the sides. Learned counsel for the petitioner submitted that the appellant had filed an application seeking amendment of the plaint for insertion of Sushila Devi as a party, both in the suit as well as in the appeal, by way of amendment. However, on the objection raised by the learned counsel for the respondent, the said amendment was rejected on the ground that the appellate court has no power to allow such amendment for addition of a party. It was further submitted that an appeal is a continuation of the suit and that the appellate court is vested with all the powers of the trial court. Reliance was placed upon several judgments of the Hon'ble Supreme Court wherein it has been held that the appellate court is competent to allow amendment of pleadings in the same manner as the original court. Learned counsel contended that refusal to allow amendment for addition of a necessary party would render the relief claimed by the plaintiff infructuous, as Sushila Devi, being the daughter of Late Dasrath Yadav, is a co-sharer and therefore a necessary party to the suit. It was submitted that her non-joinder occurred due to inadvertence on the part of the typist while drafting the original plaint. It was further argued that refusal to allow amendment for insertion of Sushila Devi amounts to an error apparent on the face of the record. Accordingly, a prayer was made to review the order dated 15.05.2024 and to pass a fresh order directing that Sushila Devi be impleaded as a party. In support of his submissions, learned counsel for the appellant placed reliance on several judgments of the Hon'ble Supreme Court and the Hon'ble Patna High Court relating to amendment of pleadings. Per contra, learned counsel for the respondent 1st party submitted that the appellants cannot be permitted to take advantage of their own default and negligence. It was contended that the order dated 15.05.2024 was passed after granting several opportunities to the appellants, as would be evident from the order-sheet, and that no supporting affidavit has been filed along with the review petition. Learned counsel further submitted that the review petition is barred by limitation and has been filed solely with an intention to delay the disposal of Title Appeal No. 04 of 2022, which is ripe for final hearing.	

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<u>Contd.</u> 04.06.2026	It was also argued that despite objection being raised at the very inception of the suit in the written statement, the appellants deliberately failed to implead Sushila Devi as a party, and such suppression of material facts was intentional. Even after repeated adjournments, the appellants failed to satisfactorily explain their default and negligence. It was submitted that no ground permissible under law for review has been made out and that, in view of the amendment to Order VI Rule 17 of the Code of Civil Procedure, the scope of amendment has been considerably restricted. Learned counsel prayed for dismissal of the review petition with costs for causing unnecessary harassment to the opposite party. Heard the argument learned counsel for both the sides and perused the record, it appears from the perusal of the record of Title Appeal No. 04 of 2022 that the appellants have filed petitions dated 02.07.2022, 15.02.2024 and supplementary petition dated 07.05.2024 for amendment in the memo of appeal of Title Appeal No. 04 of 2022, which were dismissed as not maintainable vide order dated 15.05.2024, observing inter alia that Order XLI Rule 20 of the C.P.C. was not applicable in the facts of the case since the appellants had failed to implead Sushila Devi as a party during the entire pendency of the suit. It was further observed that Order VI Rule 17 of the C.P.C. was also not applicable as the same permits amendment only before the commencement of trial and the appellants, despite objection having been taken in the written statement itself, remained negligent and did not seek amendment at the appropriate stage. The scope of review under Order XLVII Rule 1 of the C.P.C. is very limited. A review is maintainable only on discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the party, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason akin thereto. A review proceeding cannot be converted into an appeal in disguise for re-hearing and re-appreciation of the matter already decided.	

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<u>Contd.</u> 04.06.2026	In the present case, the appellants have failed to point out any error apparent on the face of the record in the order dated 15.05.2024. The grounds urged in the review petition are substantially the same which were raised and considered at the time of disposal of the amendment petitions. Further, the review petition has been filed belatedly without any satisfactory explanation for the delay and appears to have been filed only with the intent to protract the disposal of Title Appeal No. 04 of 2022, which is otherwise ripe for final arguments. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that no ground as envisaged under Order XLVII Rule 1 of the C.P.C. is made out for review of the order dated 15.05.2024. Accordingly, the review petition is found to be devoid of merit and is hereby DISMISSED. However, in the facts and circumstances of the case, no order as to costs. Let the record of Title Appeal No. 03 of 2022 & 04 of 2022 be sent back to the court of Ld. District Judge-II, Katihar for final hearing. Dictated Sd/- (Ranvir Singh) Principal District Judge	