

In the Court of Addl. District & Sessions Judge-II
Nalanda at Biharsharif.

Probate Case No.-17/18

30-08-2019

Heard both sides on amendment petition on behalf of applicant filed under order O/6/ Rule 17 read with Section 151 of C.P.C. dated 20.07.19 and considered the rejoinder dated 13.08.19. It has been submitted on behalf of the applicant that due to typing mistake place of death and present address of the deceased has been left to be typed while death certificate of Gangajali Devi discloses address as Mauza- Mohanchak, village- Guljar Bagh P.O. Barai, P.S. Islampur, Distt- Nalanda. Similarly, in para no. 4 of the plaint, it has been wrongly typed that applicant Rohan Kumar had rendered services to Ramchandra Pd. Yadav also with Gangajali Devi and this fact has been denied by the opposite party in para no. 10 of written statement. Therefore, in plaint para no. 1 at page no. 2 line no. 2 after the word village may be allowed to be deleted and in its place, village. Mohanchak Guljar Bagh, P.S. Islampur, should be inserted in paragraph no. 4 on page no. 5 line no. 5 the words and Ramchandra Pd. Yadav as well as and in para no. 4 in 8th line .Word as well as Ramchandra Pd. Yadav should be deleted since said amendments are of routine type and do not affect the nature of proceeding.

On the contrary, it has been argued on behalf of the O.P. that the probate proceeding has been converted into testimonial suit and issues have been framed. Witnesses have also been examined. Witnesses have suggested the amendments from which it can be safely inferred that amendment was filed taking precaution

that witnesses should support the amendment in their evidence also. Admission made in pleading cannot be withdrawn to the disadvantage of opposite party. Only typographical mistakes can be corrected through amendment and it is wrong that typist left to mention exact address of the deceased. If amendments are allowed the nature & consequences of this proceeding may be affected considerably. Therefore, amendment should be refused. Although, opposite party has denied to have been looked after by the applicant Rohan Kumar along with the deceased, but Hon'ble Court's have laid down principle that the errors apparent on face on record which could not have been corrected even by due diligence of applicant only can be amended. Residential address of deceased and fact about rendering of services by Rohan kumar even to Ramchandra Prasad. are not routine type errors and if these amendments are allowed opposite party may be prejudiced and there is every chance of loosing advantage accrued in favour of opposite party. Moreso, amendment petition should be brought before the court maximum up to first hearing of the case and not after examination of witnesses.

Therefore, prayer for amendment stands dismissed.

Put up on 17.09.2019 for evidence.

(Dictated & Corrected by me)

2nd Additional Sessions Judge
Nalanda at Bihar Sharif.