

In the court of Sub Judge – I, Patna City

T.S. - 101/15

CS - 112/15

Order

24-03-22

A petition dated 10.11.2020 u/o 6 rule 17 r/w 151 CPC is filed on behalf of plaintiff praying amendment in plaint. Learned advocate on behalf of plaintiff has submitted that plaintiff has filed this suit for partition and there are typing mistake in the plaint and some properties has been left over from being mentioned in plaint. Further, it is submitted that at some places khata no. has been mentioned in place of plot no and the discrepancy appears due to fact that defendant is the *karta* joint family and entire document of the joint family property has been coming in custody and possession of the defendant. It is further submitted that the amendment sought is simple in nature and shall not change the nature and character or cause of action of the suit or displace defendant in any manner. It is further submitted that in plaint, schedule – II, even boundary of the suit properties have not been mentioned required for identification of the properties. Judgement of Hon'ble Apex Court is filed (AIR 2006 SC 1647) and plaintiff has placed emphasis on para no. 16, 18 and 20 of the said judgement. It is also submitted plaintiff that as soon as he came to know about other joint ancestral property, the amendment petition has been filed. Further, it is contended that if amendment is not allowed, the party will be forced to file other partition suit leading to multiplicity of the suit. It is also submitted on behalf of plaintiff that plaintiff has not started his evidence and though there has been some delay but same is negligible. Accordingly, it is prayed that proposed amendment may be allowed as necessary and essential for proper and just decision of the suit.

A rejoinder dated 12.02.2021 is filed on behalf of defendant wherein learned advocate has submitted that the amendment petition by defendant is barred by limitation as filed after six years and plaintiff vide amendment wants to include self acquire properties of defendant, which has been purchased after the death of their father. It is further submitted that plaintiff has filed this partition suit with wrong

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and false statement as the property has been already partitions and party have already came in separate possession. It is further submitted that defendant is in service of Railway since 1986 and getting handsome salary, has purchased the properties sought to be included through amendment, from different persons through different registered sale deed as already mentioned by defendant in schedule – II (A) of written statement. It is further submitted that both plaintiff and defendant have sold their land separately after partition and plaintiff himself being executant of the sale deed dated 02.02.2015 has admitted about the partition between him and defendant. Further, defendant has contended that the record is for the evidence of plaintiff and evidence of defendant has already been concluded. Accordingly, amendment should not be allowed. It is further submitted that since issued is settled and defendant evidence is closed therefore the proposed amendment on behalf of plaintiff is hit by proviso of order 6 rule 17 C.P.C and plaintiff has failed to prove due diligence as mandate of order 6 rule 17 C.P.C proviso.

It is also submitted plaintiff wants to bring new case by way of amendment and wants to include properties which are not part of joint properties. It is also submitted the said proposed amendment will change valuation of suit property. Further it is submitted that properties i.e. plot no. 700 area - 0.75 decimal, plot no. 701 area – 0.27 decimal, plot no. 169 area – 0.3 decimal, plot no. 234 area – 12 dhur, plot no. 444 area – 2.5 Kattha, plot no. - 430 area – 13 decimal, plot no. - 413 area – 0.77 decimal, plot no. 61 area – 0.34 dec., are self purchased properties of defendant and document is also filed on behalf of defendant. It is argued that all properties are purchased by defendant after death of the father Ayodhya Singh in 2003. It is also argued that in plaint, not a single word with regard to purchase of property after 2003 i.e. death of father Ayodhya Singh is mentioned. Accordingly, amendment should not be allow. Defendant has also submitted that the proposed amendment is hit by order 2 rule 2 C.P.C. as plaintiff should have brought the partition suit including the whole claim. Defendant has relied upon Hon'ble Supreme Court Judgement AIR 1996 SC page 2358 to 2359 and PLJR 2005 (3) page 455 to 458. Accordingly, defendant has prayed for rejection of the amendment petition filed by plaintiff.

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Heard both parties and perused the record alongwith Judgement of Hon'ble Supreme Court filed by both parties. It transpires that plaintiff has brought title partition suit 101/2015 for partitions between the parties, who happens to be his brother. The record is pending for plaintiff evidence and defendant has closed his evidence. Plaintiff through the proposed amendment wants to include several properties being joint family property to be partitioned. Plaintiff has categorally stated that since defendant being elder brother and karta of the family was in possession of all documents alongwith knowledge with respect to the properties bought from the nucleus of joint Hindu property and same was not within the knowledge of plaintiff as younger brother. So, amendment needs to be allowed for determination of real controversy between the parties. Also perused judgement of Hon'ble Supreme Court AIR 2006 SC 1647 wherein Hon'ble Supreme Court in para 20 has held that :-

“While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsely of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment”.

Further, Hon'ble Supreme Court in para 19 has held that :-

“The real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed ; if it is not, the amendment will be refused. It is settled by catena of decisions of this court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the large interest of doing full and complete justice to the parties before the court.”

Defendant has argued that plaintiff by bringing this amendment intends to bring exclusive property of defendant for partition and that is also barred by limitation. Now applying the principle laid by Hon'ble Supreme Court, it transpires that defendant wants to enter into merits of the amendment and same is against co-ordinal principle governing law of amendment. The Court is also of opinion that if the said amendment is not allowed,

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plaintiff will be forced to bring another partition suit with respect to the properties which is sought to be included in this partition suit and same is against the principle of amendment enshrined in C.P.C. The court is also of opinion that the said amendment is necessary for deciding real dispute between the parties and is necessary for doing full and complete justice between the parties before the court. Further, Defendant has failed to satisfy the court as to how plaintiff by proposed amendment is intending to withdraw any admission jeopardizing the interest of defendant and has also failed to satisfy the court as to how nature of suit will change, if the proposed amendment is allowed. The court is unable to understand the contention of defendant that just by bringing more properties by way of amendment, plaintiff will get share in the said properties. Court is of opinion that since this present suit is brought for partition of joint family property between the parties, so any property proved during course of trial to be self acquired property by either party, will not be subject matter of the present partition suit. With regard to contention of delayed filing of amendment petition, the court is of opinion that though present amendment is filed at belated stage but the present amendment appears to be necessary for doing full and complete justice between the parties and also to prevent multiplicity of the suit and delay can be compensated by cost. On the basis of above discussion, this court is of opinion that the proposed amendment is necessary for doing full and complete justice between the parties and also to prevent multiplicity of suit with respect to same subject matter between the parties, accordingly the plaintiff's amendment petition dated 10.11.2020 is hereby allowed at the cost of Rs. 1500/- to be given to defendant. The order will come into effect after payment of the said cost in favour of defendant within one month.

Put off for further proceeding on 25-4-22

Dictated

 24/03/22
Sub Judge - I