# IN THE HIGH COURT OF JUDICATURE AT PATNA
## CIVIL MISCELLANEOUS JURISDICTION No.1740 of 2019

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Musay Tanti, S/o Late Chamru Tanti, R/o Village-Mirachak, PS Industrial Barai, District Bhagalpur.

... ... Petitioner/s

Versus

1. Raj Kumar Mandal, S/o Late Manti Mantri, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
2. Lalo Devi, D/o Manti Mantri, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
3. Meera Devi, D/o Manti Mantri, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
4. Udha Devi, D/o Manti Mantri, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
5. Gultan Tanti, S/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
6. Paltan Tanti, S/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
7. Binod Tanti, S/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
8. Bablu Tanti, S/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
9. Tempa Tanti, s/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
10. Ampa Tanti, S/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
11. Bhabesh Tanti, S/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
12. Janki Devi, D/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
13. Chandan Devi, D/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
14. Guddi Kumari, D/o Late Chun Chun Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.
15. Rama Nand Tanti, S/o Musay Tanti, R/o Village-Mirachak, PS Industrial Barai, District-Bhagalpur.

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Chandra Kant, Advocate
Mr. Navin Kumar, Advocate
Mr. Sudhanshu Prakash, Advocate

For the Respondent/s : Mr.Indeshwari Prasad Mandal, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**
**CAV JUDGMENT**

**Date : 20-08-2025**

The present civil miscellaneous petition has been filed by the petitioner for setting aside the order dated 16.09.2019 passed by the learned Sub Judge-X, Bhagalpur in Title Suit No. 175/1995 whereby and whereunder the learned trial court rejected the amendment application dated 09.09.2019 filed by the plaintiff/petitioner under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

2. Briefly stated, the facts of the case are that, the petitioner is one of the plaintiffs and he and respondents 2nd set have filed Title Suit No. 175/1995 for declaration of right and title over the suit land with further declaration that defendants/respondents 1st set have no right and title over the said land. Further declaration has been sought that survey entry with regard to said land is not correct and restraining orders against the defendants not to interfere with the possession of the plaintiffs has also been sought. Schedule A of the plaint contains land which is situated at Mauza- Mirachak, P.S.-Barari, Khata No. 132, Khesra No. 259, having an area of 90 decimals in the district of Bhagalpur and the boundary of the same is North-

Laboo Tanti, South-Damodar Tanti, East- Harni Devi and West-Megho Devi.

3. The plaintiffs case is that suit land was the property of Ex-landlord Naresh Mohan Thakur, who sold the same to the mother of the plaintiff no.1 and the mother purchased the suit land in the name of Chunchun Tanti vide sale deed dated 04.09.1959. At that time, Chunchun Tanti was minor and the purchase was made from the joint family income. Further case of the plaintiffs is that on 17.06.1960, the mother of the plaintiff no. 1 and Chunchun Tanti, after attaining majority, executed a fake sale deed without consideration to one Mantri Mandal. Mantri Mandal was friend of the family of the plaintiffs and after some time, he returned all the lands except this land. The plaintiffs filed the suit claiming their share in the suit land as the mother of plaintiff no. 1 died and Chunchun Tanti also died and his family was not good terms with the plaintiffs. The plaintiffs further claim that the suit land is being used by the plaintiffs and they have been paying rent to the State of Bihar. However, in the entry of the Survey Department, the suit land has been shown in the name of one Fata Mandal, son of Gholtan Mandal. Fata Mandal was said to be the father of Mantri Mandal. The plaintiffs claim that the survey entry is incorrect and the same

has been prepared without any basis. The defendants have no interest in the suit land. But they are disputing the right and title of the plaintiffs. The plaintiffs further made averment that the sale deed executed by Chunchun Tanti in favour of Mantri Mandal dated 17.09.1960 and subsequent sale deed by Mantri Mandal in favour of Raj Kumar Mandal dated 10.10.1977 is not binding on the plaintiffs. The defendants have neither title nor possession over the suit land. When the defendants obstructed the possession of the plaintiffs, the present suit has been filed.

4. After service of notice, defendants appeared and denied the statement made in the plaint. The case of the defendants is that on 17.09.1960, the defendants purchased the suit land and mutation was done in their name and rent was being paid to the State of Bihar. Subsequently, survey entry was made in the name of the defendants and the plaintiffs did not challenge the survey entry when the *khatiyan* was finally published. Further defendants sold the land to one Raj Kumar Mandal on 10.10.1977. It is further submitted that the nature of the land has gradually changed. Initially it was used to manufacturing of bricks and brick-kiln on the suit land had been running for 15 years. Now the land has become ditch and it is being used as pond for rearing fishes.

5. It further transpires that after completion of pleadings, the learned trial court framed the issues and directed the parties to lead evidence in respect of their respective cases. It further transpires that argument of defendants was completed on 22.06.2019 and the plaintiffs started its argument and in course of arguments of the plaintiffs on 15.07.2019, the plaintiff/petitioner filed a petition under Order VI Rule 17 of the Code of Civil Procedure, which was allowed with cost of Rs.5,000/-. Another application under Order 6 Rule 17 read with Section 151 of the Code has been filed on 09.09.2019 by the plaintiff/petitioner. The defendants filed their rejoinder to the amendment application opposing the amendment sought by the plaintiffs. The learned trial court, after hearing the parties, rejected the application dated 09.09.2019, filed by the plaintiff/petitioner, vide order dated 16.09.2019. This order is under challenge before this Court.

6. The learned counsel for the petitioner submitted that the learned trial court has dismissed the application seeking amendment by the plaintiff/petitioner on unfounded grounds. The learned trial court considered the merits of the case which considering the amendment application but the merits of the amendments are not to be seen at this stage. The learned counsel

further submitted that the learned trial court held that allowing the amendment will change the nature of the suit and trial will restart. But by way of amendment, the plaintiff/petitioner has sought to add one more relief, that the two sale deeds not binding on the plaintiffs and this would not change the nature of the suit and the suit will remain a title suit. The learned counsel further submitted that the learned trial court ought to have considered that the said amendment is essential for just decision of the case and for complete adjudication of the dispute, the amendments sought by the plaintiffs need to be allowed. The learned counsel further submitted that one of the amendments is with regard to a family partition which took place in the year 1994 and the suit land falling in the share of the plaintiffs. Further in the relief portion, it has been sought to be added as ‘the Kewala dated 17.09.60 and 10.10.77 is not binding to the plaintiff’. Further relief has been sought through amendment that if the plaintiffs are dispossessed by the defendants, possession may be granted to the plaintiffs through the process of the court. The learned counsel further submitted that apparently the plaintiffs have filed the suit claiming right, title, interest and possession over the suit land and that the defendants had/have no concern with it and survey entry in the name of

*Khatiyan* in respect of suit land is wrong and incorrect and at the same time, sought injunction orders. Now, the plaintiffs want to bring on record explanation as to how the plaintiffs got right, title and interest over the suit land by partition between brothers Chunchun Tanti and Musai Tanti. Similarly in paragraph 9, the plaintiff/petitioner sought introduction of the word 'bogus kewalas' conferring no title. Since, in paragraph 8a, already the fact has come about challenge to the sale deeds dated 17.09.1960 and 10.10.1977, seeking relief is natural consequence of the challenge. The learned counsel further submitted that if the amendments are allowed, the plaintiff/petitioner would not lead further evidence and complete his argument so as to dispose of the case.

7. The learned counsel next submitted that there could be no application of proviso to Order 6 Rule 17 of the un-amended Code in the present case since the suit has been filed in 1995 and Amendment Act made it clear that the amended proviso would not be applicable on pleadings made prior to the amendment which came into effect on 01.07.2002. So there could be no bar for seeking amendment even at the stage of argument.

8. In support of his contention, the learned counsel

referred to the decision of the learned Single Judge of this Court in the case of S***hri Shankar Bhagwan & Ors. vs The State of Bihar & Ors.***, reported in ***2008 (2) PLJR 588*** wherein the learned Single Judge discussed the amendment in the Code of Civil Procedure which was brought into force w.e.f. 01.07.2002, to support his contention that the amended provision of Order 6 Rule 17 of the Code in respect of amendment being barred if no due diligence is shown after commencement of trial, is not applicable to the case which has been filed prior to the amendment on 01.07.2002 and referred to paragraphs 7, 8, 9 of the aforesaid decision which read as under :

> ***"7.*** *The said provision of the Code was amended by the Code of Civil Procedure (Amendment) Act, 2002 (XXII of 2002) which was brought into force from 1st July, 2002 vide Government Notification No. S.O. 604 (E), dated 6th June, 2002 and which reads as follows:*
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> *"Order VI, Rule 17. Amendment of pleadings.—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:*
>
> *Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the*

*conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."*

***8.*** *However, section 16 of the abovementioned Amending Act provides repeal and savings, sub-section (2) of which reads as follows:—*

*"Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,—*

*(a) the provisions of section 102 of the principal Act as substituted by section 5 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 5; and every such appeal shall be disposed of as if section 5 had not come into force;*

*(b) the provisions of Rules 5, 15, 17 and 18 of Order VI, of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and section 7 of this Act."*

***9.*** *From the aforesaid provisions of law it is quite apparent that the legislature had clearly meant that <u>generally provided</u> in section 6 of the General Clauses Act. 1897 with respect to effect of repeal was not affected by the Amending Act and that the provision of Rules 17 and 18 of Order VI of*

*the Code as substituted by the Amending Act of 2002 shall not apply to the cases filed prior to the commencement of the Amending Act. In the instant case admittedly suit was filed in the year 1988, whereas the aforesaid Amending Act came into force on 1.7.2002, hence the amended provision of the Code with respect to amendment of the pleadings would not be applicable to the instant suit and any amendment sought to be made in the pleadings of that suit would be governed by the provision of Order VI, Rule 17 of the Code which was in force prior to the coming into force of the Amending Act and thus for allowing amendment after commencement of the trial, the Court is not required to come to any conclusion that in spite of due diligence the party could not raise the matter before commencement of trial in the suit and amendment of pleading can be allowed at any stage of the proceeding of the suit provided it is just and is necessary for determining the real question in controversy between the parties".*

9. In support of his contention that the amendment could be allowed at any stage, learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Vasantha (dead) through LR. vs. Rajalakshimi @ Rajam (dead) through Lrs***. reported in (***2024) 5 SCC 282*** wherein the Hon'ble Supreme Court held that amendment of the plaint can be permitted at any stage of the suit and even at the second

appellate stage.

10. The learned counsel next referred to the decision of this Court in the case of ***Smt. Bibha Devi vs. Smt. Annu Devi*** reported in ***2024 (5) BLJ 74*** wherein this Court allowed the amendment to be incorporated while the evidence of the plaintiffs was being recorded subject to cost holding that it is for the Court to decide that such amendment would enable the court to consider the dispute between the parties in true perspective and would help it in arriving at a right decision and allow it to determine the real question in controversy. This Court further held that if such amendment avoids multiplicity of litigation, then these amendments need to be allowed.

11. The learned counsel next referred to the decision of the Hon'ble Supreme Court in the case of ***Pankaja and Anr. vs. Yellappa (dead) by Lrs. And Ors***. reported in **AIR 2004 SC 4102**. Relevant paragraphs 12, 13 and 14 read as under :

> ***"12.*** *So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so*

*permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.*

***13.*** *But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.*

***14.*** *The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case".*

12. The learned counsel also submitted that the Court has got wide powers to allow amendment at any stage or even after commencement of trial if the same is necessary for determination of real controversy between the parties. Thus, the

learned counsel submitted that the impugned order could not be sustained and the same needs to be set aside.

13. On the other hand, learned counsel appearing on behalf of the respondents vehemently contended that there is no infirmity in the impugned order and the same is proper and correct. The learned trial court has considered the fact that just before the instant amendment application, the plaintiffs filed an application for amendment and when the said application was allowed, the plaintiffs again approached this Court by filing the instant application when the argument of the plaintiffs started in this case. In order to fill up his lacuna of the case, the plaintiffs has been seeking amendment. The learned counsel further submitted that amendment has been sought at a very late stage and is malafide. The suit has been filed in the year 1995 and not making any application seeking amendment for almost 24 years shows the callous and negligent attitude of the plaintiffs. The learned counsel further submitted that by way of amendment, the plaintiffs have been seeking a relief against a time barred claim. If the plaintiffs are allowed to challenge the sale deeds of 1960 and 1977 at this stage, apparently the same has become time barred, and the Court would be allowing a time barred claim for which the period of limitation is only 3 years. The

learned counsel further submitted that if any partition has taken place in the year 1994 in the family of the plaintiffs, it should have been mentioned in the plaint of 1995 and should not have been sought to be incorporated in 2019. This amendment itself smacks of malafide. By introducing the amendment, the plaintiffs want to deny the claim of the defendants which is based on registered sale deeds of the year 1960 and 1977 and as the plaintiffs were having knowledge of the sale deeds, not bringing this fact in their plaint, for all these years, shows lack of bonafide on the part of the plaintiffs/petitioners. Thus, learned counsel submitted that the impugned order needs no interference by this Court.

14. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

15. Order VI Rule 17 of the Code provides for amendment in pleading and it reads as under:-

> *"17. Amendment of pleadings.-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:*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."*

16. The proviso appended to Order 6 Rule 17 of the Code was added by the Code of Civil Procedure (Amendment) Act, 2002 which came into force with effect from 01.07.2002. Now Section 16(2)(b) of the amending Act, 2002 reads as under :

*"the provisions of Rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act".*

17. Therefore, a plain and simple reading of the aforesaid provision creates an exception to the general rule of interpretation about amendments in procedural law being retrospective. The insertion of proviso to Order 6 Rule 17 of the Code by Section 7 of Amendment Act 22 of 2002 read with

Section 16 (2) (b) of the Amending Act, 2002 makes it clear that the proviso shall not apply in respect of any pleading filed before the commencement of the said Act, which means the changes made by the Amending Act of 2002 shall not apply in respect of amendment of pleading filed prior to commencement of the said provision. Now the meaning of pleading is provided in Order 6 Rule 1 of the Code which means plaint or written statement. Therefore, the amendments sought by the plaintiff/petitioner could not be denied on the ground that the plaintiff/petitioner has failed to show due diligence for not seeking amendment prior in time.

18. Now, it has to be seen whether the amendments sought by the petitioner could be allowed in the background of the fact that the suit has been pending since 1995 and the petitioner has on a number of occasions exercised the privilege under Order 6 Rule 17 of the Code for making amendments in the plaint.

19. A three Judges Bench of the Hon'ble Supreme Court in the case of ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil & Ors***, reported in ***AIR 1957 SC 363*** quoted with the approval the principles enunciated by Batchelor, J. in the judgment of ***Kisandas Rupchand case (1900) ILR 33 Bom.***

***644*** wherein it has been held that all amendments ought to be allowed which satisfy the two conditions; (*a*) of not working injustice to the other side, and (*b*) of being necessary for the purpose of determining the real questions in controversy between the parties. The Hon'ble Supreme Court further held that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.

20. Now, in the present case, the plaintiff/petitioner has sought the amendment with regard to the fact that oral family partition had taken place in the year 1994 and the plaintiff/petitioner and his brother got ½ share in the joint family property and the suit land went in the share of the plaintiff and his son.

21. This amendment clarifies the facts already pleaded by the plaintiff in his plaint and could be considered as an explanation and cannot be said to be introduction of a new fact. Similarly, making amendment with regard to the sale deeds dated 17.09.1960 and 10.10.1977 and relief sought against such sale deeds could not be said to introduce any new case because the plaint in its body already talks about the sale deeds dated

17.09.1960 and 10.10.1977 and seeking relief by way of amendment against the sale deeds could not be said to be a new relief. The defendants have all along been knowing about the averment regarding sale deeds dated 17.09.1960 and 10.10.1977 and they could not be said to be taken by surprise.

22. In ***Pankaja*** (supra), the Hon'ble Supreme Court observed that an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.

23. Therefore, it is to be kept in mind that object of courts and rules of procedure is to decide rights of the parties and not to punish them for their mistake.

24. Apparently the relief against the sale deeds dated 17.09.1960 and 10.10.1977 appears to be time barred, but if the amendment is not allowed the purpose of determining the real controversy between the parties would be frustrated and litigation would continue to multiply. Therefore, I am of the considered opinion that poor drafting of the plaint or incompetence of the person behind such poor drafting should

not prevent the courts from arriving at a just decision by taking a holistic view so that the litigation could be given a quietus and multiplicity of litigation is avoided. But at the same time, putting the other side at inconvenience must be compensated by awarding cost and providing opportunity to such defendants to rebut the contention sought through the amendment.

25. Therefore, in the light of discussion made hereinbefore, I am of the view that the learned trial court committed an error of jurisdiction when it refused to allow the amendment petition and rejected the same. Hence, I do not find the impugned order dated 16.09.2019 to be sustainable in the eyes of law and, accordingly, the same is set aside. Consequently, the application dated 09.09.2019 filed by the plaintiff/petitioner before the learned trial court is allowed subject to payment of cost of Rs. 25,000/-(twenty five thousand only) to be paid by the petitioner to the contesting defendant/respondent on the first date before the learned trial court after passing of this judgment.

26. However, the contesting defendant/respondent will be given ample opportunity to rebut/controvert the claim of the plaintiff/petitioner sought to be brought through amendment including filing of amended written statement/additional written

statement.

27. As a result, the instant petition stands allowed.

**(Arun Kumar Jha, J)**

V.K.Pandey/-

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| **AFR/NAFR** | AFR |
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