

**(2023) 03 PAT CK 0025**

**Patna High Court**

**Case No:** Civil Miscellaneous Jurisdiction No. 1296 Of 2018

Haider Imam

APPELLANT

Vs

Md. Ehtesham

RESPONDENT

**Date of Decision:** March 15, 2023

**Acts Referred:**

- Constitution Of India, 1950 - Article 227
- Code of Civil Procedure, 1908 - Section 151, Order 6 Rule 17

**Hon'ble Judges:** Sunil Dutta Mishra, J

**Bench:** Single Bench

**Advocate:** Radha Mohan Pandey, Sajid Salim Khan

**Final Decision:** Dismissed

### **Judgement**

1. Heard learned counsel for the parties.

2. The instant Civil Miscellaneous application under Article 227 of the Constitution of India has been filed for setting aside the order dated 15.12.2017 passed by learned Sub Judge – VIII, Gaya in Title Suit No. 80 of 2017 by which amendment petition dated 07.12.2017 filed by the plaintiff / respondents 1st Set under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure has been allowed.

3. Learned counsel for the petitioners has submitted that the plaintiff / respondent No. 1 instituted Title Suit No. 80 of 2017 on 13.10.2017 for declaration that defendant No. 1/ respondent No. 2 herein (the owner of suit land) had no right to make any construction over the roof of plaintiff's ground floor of the suit property and the registered sale deeds by defendant No. 1 in favour of defendant Nos. 2 and 3 (first floor) and in favour of respondent No. 4 (second floor) are void ab initio conferring no title on the said vendees and not binding on plaintiff. The mandatory and permanent injunction has also been prayed for. Petitioner Nos. 1 and 2, who are defendant Nos. 2 and 3 before the trial Court, have also appeared in the suit and filed their joint written statement and denied the claim of the plaintiff. The plaintiff thereafter before settlement of issues filed an amendment petition dated 07.12.2017 for amending his pleading in the plaint which has been allowed with cost vide the impugned order dated 15.12.2017.

4. Learned counsel for the petitioner has further submitted that the learned trial Court without providing sufficient opportunity to file rejoinder to the amendment petition passed the impugned order, the proposed amendment in plaint will change the nature of plaint and the same is not bona fide as the plaintiff wants to grab the entire land and building whereas he has purchased ground floor up to height of 14 feet only as is described in the sale deed dated 26.05.2006. He further submits that the impugned

order being illegal is liable to be set aside by this Court in its supervisory jurisdiction.

5. Learned counsel for the respondents submits that the proposed amendment has been sought for in the light of the averments made in respect of sale deed dated 26.05.2006 executed in favour of plaintiffs and also two sale deeds dated 23.03.2009 and 29.10.2013 made in favour of defendants which are under challenge in the suit. In view of the challenge of both the sale deeds executed in favour of defendants, the present amendment is necessary in order to determine the real issue in controversy between the parties. It is neither unwarranted nor mala fide rather it is mere explanation of foundational pleadings already made. He has submitted that the petition dated 31.01.2018 to amend the pleading with respect to condition of height in sale deed dated 26.05.2016, has been allowed by the order dated 03.02.2018 by the trial Court and affirmed by the High Court vide order dated 27.09.2018 passed in Civil Miscellaneous No. 782 of 2018.

6. Learned counsel for the plaintiff / respondent 1st set submits that the plaintiff has challenged the sale deed in the suit and also pleaded that plaintiff acquired absolute ownership over the suit land up to sky high irrespective of the illegal and unlawful condition put in the sale deed dated 26.05.2016 and these issues are to be adjudicated by the trial Court on the basis of evidence adduced in support of such claim which cannot be seen at this stage. Amendments sought are based on fundamental facts already pleaded and formal in nature, are also necessary for determination of issue in controversy. Moreover, since the same have been made prior to commencement of trial or even before framing of issues, there is no question of any prejudice being caused to the defendants / petitioners.

7. It is submitted that there is no jurisdictional error committed by the trial Court by allowing the amendment petition as the amendments sought are neither barred by law of limitation nor will change the nature of suit nor even can be termed as mala fide and the same are necessary to resolve / adjudicate all the issues between the parties in respect of subject matter of the suit. He has next submitted that it is universal principles of law that allowing amendments does not amount allowing suit itself rather it is only prior notice for the other side because amended pleadings and reliefs are required to be proved.

8. Having heard the learned counsel for the parties and on perusal of the materials on record and also the impugned order, it appears that the learned trial Court had given the opportunity to file rejoinder (if any) to the amendment petition but the same had not been filed and on merit held that amendments are required to bring out the real matter in controversy and do not change the nature of the suit and issues have not been framed in this suit and the suit is in infancy stage, some amendments are pure formal and some are elaboration of the facts pleaded in the plaint. The trial Court on consideration of the said facts and circumstances allowed the said amendment petition with cost.

9. The Hon'ble Supreme Court in *Revajeetu Builders and Developers Vs. Narayan Swamy and Sons and Others* (2009) 10 SCC 84 on critically analysing both the English and Indian Cases, held that some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(i) whether the amendment sought is imperative for proper and effective adjudication of the case.

(ii) whether the application for amendment is bona fide or mala fide.

(iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money.

(iv) refusing amendment would in fact lead to injustice or lead to multiple litigation.

(v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case, and

(vi) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

10. The law is now well settled that the Courts must not refuse bona fide, legitimate, honest and necessary amendments and should not permit mala fide, worthless and/or dishonest amendment. The purpose and object of Order VI Rule 17 of the Code of Civil Procedure is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Such amendments seeking determination of real question of controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. The opposite parties are not prejudiced because they will have an opportunity of meeting the amendment sought to be made.

11. Applying these parameters to the present case and in the light of above discussion of facts and law, I find that the learned trial Court has not committed any illegality, error or mistake and accordingly the impugned order does not warrant any interference by this Court under Article 227 of the Constitution of India. The application is being devoid of any merit and is liable to be dismissed.

12. This application is, accordingly, dismissed. However, it is needless to state that the defendants shall have liberty to file additional written statement.

13. There shall be no order as to costs.