

(1983) 09 PAT CK 0029
In the Patna High Court
Case No : Civil Revision No. 94 of 1980

Ram Prasad Mahton and Others		APPELLANT
	Vs	
Babu Jagoo Mahton and Others		RESPONDENT

Date of Decision : 28-09-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : AIR 1984 Patna 158 : (1984) 32 BLJR 48

Hon'ble Judges : Ashwini Kumar Sinha, J

Bench : Single Bench

Advocate : Bindeshwari Prasad Sinha and Chitra Gupt Prasad, for the Appellant;
Sachchida Nand Chaudhary and D.C. Chakravarty for Minor, for the Respondent

Final Decision : Allowed

Judgement

Ashwini Kumar Sinha, J.—This is defendants (Defts. 1 to 5) application against the order dated 12-12-1979 passed in Title Suit No. 18/40 of 1974, by which the amendment sought by the defendants in their written statement has been refused.

2. The plaintiffs have brought the suit for partition of the properties claiming the same to be their joint family properties along with the defendants. The defendant-petitioners filed written statement, and their case was that there had already been partition of the family properties and thus the suit for partition was not maintainable. Further claim of defendant No. 1 was that some of the properties were self-acquired properties.

3. On 22-9-1979 a petition was filed on behalf of defendants 1 to 16 under Order VI Rule 17 of the Civil P. C. seeking amendment in the written statement on the grounds mentioned therein, The plaintiffs" filed a rejoinder and con-tended that the amendments sought for by the defendants were fit to be rejected, The court below only held that the amendments sought for in the petition appeared to be redundant and unnecessary as according to the court below the explanation of

the facts need not necessarily be stated in the pleadings. In the opinion of the court below the petition filed by the defendants was a long one which amounted to overhauling the written statement filed earlier on behalf of the defendants. It is desirable to mention here that the earlier written statement was filed on behalf of defendants Nos. 1 to 5 and 16 but in the petition for amendments it is mentioned that it is on behalf of defendants 1 to 16. Admittedly defendants 6 to 15 had not filed their written statement and, therefore, obviously in the application filed by the defendants an error crept in and the learned counsel for the petitioners is right in his submission that the petition for amendment was filed on behalf of defendants Nos. 1 to 5 and 16 only.

4. The petitioners have filed a supplementary affidavit in which they have clarified as to what the original statements made in Paragraphs 6, 11, 12, 15, 22, 23 and 24 were and what amendments were sought for by the petition dated 22-9-1979, Learned counsel for the petitioners has drawn my attention to the supplementary affidavit filed in this case. I have carefully perused the whole of it and I have found that the amendments sought for only clarify and bring on record the relevant details connected with the facts already stated. It is well settled that if the amendments sought for are only clarificatory in nature they cannot be refused. It is also well settled that if a fresh suit on the amended claim is barred by law of limitation on the date of application, the amendment should not normally be allowed. Amendment to be allowed must be such that it should not cause in justice to the other side. It must be necessary for the purpose of determining the real questions in controversy between the parties. Amendment should not be allowed if it is likely to cause such injury which cannot be compensated in costs such as a claim which is barred on the date of the application etc. Amendment should not be allowed if it has got the effect of taking away the legal right accrued to the other side by reason of lapse of time. It is also well settled that if new assertions or new facts brought in for the purpose of amendment do not change the complexion of the suit the amendment cannot be refused. It is true that in the instant case a few new facts are sought to be introduced but they, in my opinion, do not either change the defence already taken in the original written statement or change the complexion of the suit. It is not the case of the plaintiffs opposite party that the defendants had originally admitted any part of plaintiff's claim and now by amendment they are introducing new facts. It is also well settled that if the amendment sought for is to clarify and bring on record the relevant details connected with the facts already stated, the amendment cannot be refused.

5. I have already held above, on perusal of the supplementary affidavit filed by the petitioners, that the amendments in the instant case sought for are purely clarificatory in nature. The court below has acted illegally in the exercise of its jurisdiction in refusing the amendment. I further hold that the amendments, if allowed, cause no prejudice, whatsoever, to the plaintiffs. I also hold that if the order under revision is allowed to stand, it would not only occasion failure of justice but would also cause irreparable injury to the petitioners against whom it

has been passed.

6. The court below has refused the amendments without fully appreciating the principles governing the amendment.

7. In the result, the application is allowed. The impugned order is set aside and the court below is directed to direct the office to incorporate the amendments in the written statement. However, in the circumstances of the case, there will be no order as to costs.