

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.478 of 2017

1. Nazma Khatoon Wife of Late Ata Karim, Resident of Mauza Sonai, P.S. District-Jamui
2. Md. Raza Karim
3. Md. Ali Karim
4. Abdul Rahman @ Md. Baban, All (2-4) Sons of Late Ata Karim, Resident of Mauza Sonai, P.S. District-Jamui, At Present resident of Moh.-Mahisouri Jamui, P.S. and District-Jamui.
5. Baby @ Nishat Bano, D/o Lata Ata Karim
6. Mussarat, D/o Late Ata Karim, Both Resident of Mauza-Sonai, P.S. District-Jamui.

... .. Petitioner/s

Versus

1. Salma Karim Wife of Tauhid Zazmi, D/o Late Ata Karim, Resident of Mauza Sonai, P.O.-Amrath, P.S. District-Jamui, At Present at Rahmat Nagar Nai Basti, P.O. P.S.-Barnpur, District-Bardwan West Bengal
2. Nauzaba, Wife of Md. kalam Khan & D/o Late Ata Karim, Resident of Mauza Sonai, P.O.-Amrath, P.S. District-Jamui, At Present at Village-Buda, Hatan Road, Asansol, District-bardwan West Bengal
3. Dazy, Wife of Md. Rizwan, & D/o Late Ata Karim, Resident of Mauza Sonai, P.O.-Amrath, P.S. District-Jamui, At Present at New Basti Rahmat Nagar, P.O. P.S.-Barnpur, District-Bardwan West Bengal
4. Md. Muslim, Son of Md. Mohsin, Resident of Mauza Sonai, P.O.-Amrath, P.S. District-Jamui, At Present at Ansar Nagar-Mastanganj, Par Nawada, P.S. and District-Nawada
5. Rehana Khatoon, Wife of Fazlur Rahman & D/o Md. Mohsin, Resident of Mauza Sonai, P.O.-Amrath, P.S. District-Jamui, At Present Mohalla-Sherpur, Biharsharif, P.S.-Biharsharif, District-Nalanda

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dronacharya, Advocate.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 05-12-2023

Heard learned counsel for the petitioners.

2. It has been submitted by the learned counsel for the petitioners that by the order dated 2nd of June, 2016, the learned



Sub Judge-I, Jamui, rejected the application dated 16th of December, 2013 in Title Suit No. 37 of 2004 for bringing on record the additional written statement filed by the petitioners/defendants.

3. Learned counsel for the petitioners submits that the respondents/plaintiffs filed a title suit in the court of learned Sub Judge, 1st Jamui, seeking preliminary decree for partition of the suit property to the extent of plaintiff's share to be awarded in favour of the plaintiffs and the same to be carved out by appointment of a survey knowing Pleader Commissioner as well as other reliefs. Subsequently, plaintiffs filed an amendment petition dated 6.6.2013 to the effect that the land mentioned in the Schedule II of the plaint of village Mahisouri (Jamui) appertaining to Khata No. 129, Plot No. 911, area 4 decimals be deleted from Scheduled property and accordingly, the total area of 19 decimals of village Mahisouri (Jamui) be corrected as 15 decimals. This amendment was allowed by the learned court below vide its order dated 20th of August, 2013. Learned counsel further submits that on 2nd of September, 2013, the defendants/petitioners filed an application for permission to file additional written statement after the amendment dated 20th of August, 2013 but the said application was not moved. Thereafter,



the defendants/petitioners filed a written statement dated 13th of September, 2013 supplementing and explaining their earlier written statement dated 11th of February, 2010. Thereafter the plaintiffs filed an application to reject the same vide his application dated 16th December, 2013 mentioning therein that though they have not introduced any new facts as per order of amendment dated 20.8.2013 but the defendants had filed additional written statement by stating a new story without leave of the court. It was further submitted that and even if the defendants wanted to file the additional written statement, it could be only with regard to the amendment made by them which was allowed by the order of the learned court below dated 20th of August, 2013. The learned court below after hearing the parties and considering the materials on record rejected the additional written statement dated 13th September, 2013 filed by the petitioners/defendants.

4. Learned counsel for the petitioners submits that the additional written statement has been filed after the order of the learned court below dated 20th of August, 2013 by which the amendment in the plaint was allowed and application seeking permission to bring on record the additional written statement was already on record, though, it was not moved. The prayer of the



petitioners before the learned court below was rejected on the ground that the evidence of the plaintiff was closed and the matter was running at the stage of recording the evidence of the defendants. Moreover, the court did not pass any order while allowing the amendment for filing any additional written statement or amended written statement. Further, the petitioners/defendants did not take permission of the learned court below for filing of additional written statement. However, the aforesaid observations of the learned trial court are only with regard to irregularities and could be condoned and the order of the learned trial court is in the teeth of provisions of Order VIII Rule 9 of the Civil Procedure Code. As subsequent pleading could be brought on record with the permission of the court for its limited purpose, this Court may give direction to the learned trial court to entertain a fresh petition for the petitioners/defendants to consider filing of additional written statement in accordance with law for the ends of justice.

5. Perused the record.

6. Some facts are quite explicit. It is evident that the amendment allowed by the learned court below by the order dated 20th of August, 2013 appears to be formal in nature and no new facts have been introduced since it was merely deletion of certain



portion of suit land which was subject matter before the learned trial court. At the same time the order of amendment did not allow the defendants/petitioners to file either amended written statement or additional written statement. Further, the learned trial court categorically observed that no new facts have been introduced. Rather the defendants/petitioners without the leave of the court, filed an additional written statement and it appears from the impugned order that it was in the form of amendment in their earlier filed written statement and they tried to introduce new facts in the additional written statement.

7. Having regard to the submission made on behalf of the petitioners about the order of the learned trial court being against the provisions of Order VIII, Rule 9, let us consider the provisions under Order VIII Rule 9 which reads as under:-

“9. Subsequent pleadings.— No pleading subsequent to the written statement of a defendant other than by way of defence to set off or counterclaim be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement or additional written statement from



any of the parties and fix a time of not more than thirty days for presenting the same.”

8. It is quite evident from the specific provisions of Order VIII Rule 9 that no pleading subsequent to the written statement of the defendant can be presented except by the leave of the Court. Exceptions are only defence to set-off or counter claim. The case of the petitioner does not fall within any of the exceptions. Though, written statement or additional written statement could be filed but it could be done only with the leave of the court and hence, it was incumbent upon the petitioner to seek leave of the court before filing the additional written statement which was not done.

9. From the aforesaid discussion is very much clear that the title suit before the learned court dates back to the year 2004. The amendment allowed in favour of the respondents/plaintiffs was only with regard to deletion of certain portion of suit land, which, in the opinion of the learned trial court, did not introduce any new fact. Thus no prejudice was caused to the petitioners/defendants. Further the petitioners/defendants did not seek leave of the court to amend the written statement or to file additional written statement. Without any order from the learned court below, they filed an additional written statement, which I



think was rightly rejected by the learned court below. In the aforesaid facts and circumstances, I do not find any merit in the petition of the petitioner and, hence, the same is dismissed at the stage of admission itself.

(Arun Kumar Jha, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	08/12/2023
Transmission Date	

