

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5624 of 2015

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1. Bharat Ji Prasad @ Bharat Prasad S/o Late Mahanth Prasad

2. Smt. Kisnawati Devi @ Neeta Devi w/o Bharat Ji Prasad Both are
Resident of Mauja- Sareya, Yadavpur road, ward no.4, P.O. + P.S. +
District- Gopalganj Petitioner/s

Versus

1. Yogendra Pandit S/o Late Gokhula Kohar Resident of Village- Banjari,
P.S. + District- Gopalganj.

2. Kanti Devi W/o Late Laxman Prasad

3. Gudu Kumar

4. Deepu Kumar, Both are sons of Late Laxman Prasad

5. Bagadi Kumari D/o Late Laxman Prasad

6. Chandani Kumari

7. Roshani Kumari

8. Shalu Kumari, All are minor daughters of Late Laxman Prasad through
their mother and natural guardian Kanti Devi. null

9. Sarswati Devi W/o Late Rama Shankar Prasad All are Resident of
Mauja- State Bank Maoniya Chaok, Thana Road, Gopalganj, P.S. +
District- Gopalganj. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Dwivedi
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

2 30-06-2015 Heard the learned counsel appearing on behalf of the

petitioners on merits of the writ application as well alongwith the

interlocutory application (I.A.No.3513/2015).

Calling in question the legal acceptability of the order
dated 23.03.2015 the petitioner has filed this application under
Article 227 of the Constitution of India praying for quashing of the

order by which the prayer for amendment in the plaint has been refused.

The suit has been filed by the plaintiffs for declaration of title and for avoiding the sale deed as well as the gift deed said to have been standing in favour of the defendants. The defendants denied the contention of the plaintiffs and filed their written statement asserting his independent title and possession over the suit land on the basis of the sale deed and the gift deed. During the pendency of the suit, the defendants filed a petition praying for amendment in paragraph-22 of the written statement by which he introduced the fact regarding one another gift deed in his favour dated 30.05.1981. The said amendment was allowed by order dated 16.09.2011 and the fact regarding the gift deed dated 30.05.1981 has been added in paragraph 22 of the written statement. The suit thereafter proceeded and the argument on behalf of the defendants has been complete which fact has not been denied on behalf of the plaintiffs. At this stage, the plaintiffs filed a petition dated 23.02.2015 (Annexure-4) praying for amendment in the relief portion to add the relief with regard to the gift deed dated 30.05.1981 as not binding on the plaintiff-defendant 1st set and defendant 2nd set and to add paragraphs 17 (k), 18 (k), 22 (k), 22(kh) and 23 (k). From the perusal of the



amendment petition, it becomes evident that besides seeking relief against the gift deed, entirely new facts have been proposed to be introduced in support of the plea that the said gift deed is forged, fabricated and fraudulent transaction. However, it has nowhere been stated that the plaintiffs had earlier no knowledge of the gift deed as well as these facts or in spite of due diligence, he could not know the same. The learned court below by the impugned order has rejected the prayer of the plaintiffs.

It has been submitted on behalf of the petitioners that the order passed by the learned court below is non-speaking order and therefore the same is vulnerable. It has also been argued that the present amendment is bonafide in nature and, therefore, the learned court below should have allowed the prayer for amendment. It has been urged that the junior advocate of the plaintiffs could not get the knowledge of the amendment in the written statement and the said amendment came to notice only at the time when the counsel for the plaintiffs was preparing for argument. It has, therefore, been urged that the amendment has been necessitated due to this subsequent event. The learned counsel for the petitioners has lastly submitted that the prayer for amendment is now confined to the amendment in the relief portion.



After considering the facts and submissions, it is limpid that the plaintiffs have prayed for amendment at the stage when the argument of the defendants in the suit was over. The explanation on behalf of the plaintiffs for making prayer for amendment at this stage is the lack of knowledge of the amendment in the written statement by the defendants though the same was done in the year 2011. It is not the case of the plaintiff-petitioners that even after the suit proceeded for almost 4 years, they did not have the knowledge of the amendment in written statement. It is also not their case that the said amendment in the written statement was allowed in absence of the plaintiffs or their counsel. It is evident that the hearing of the suit has proceeded after 2011 with the amended written statement on record and has reached to the stage where the argument on behalf of the defendants is complete. In this backdrop, the absence of knowledge of the amendment to the plaintiffs or their advocate cannot be believed as the element of due diligence as required in the amended provision of Order 6 Rule 17 is completely absent. The plea like absence of knowledge to the junior advocate has no limit and cannot explain away the absence of due care and effort as evident from the records. Furthermore, there was no prayer before the court below to confine the prayer of amendment to the

relief only and the learned court below had no occasion to consider the said prayer. There is also no such averment in this writ application showing that the various amendments as prayed in the petition (Annexure- 4) are not integrated and can be considered independently. As such, the submission on behalf of the petitioners at this stage to confine the prayer for amendment in the relief portion of the plaint appears to be more in desperation and has no substance.

For the aforesaid reasons and discussion, this Court does not find any error or illegality in the impugned order. The writ application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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