

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1731 of 2014

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Parvati Kumari @ Parvati Devi

.... Petitioner/s

Versus

Most Ram Surati Kuer & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 15-12-2015

Heard learned counsel Mr. Baidyanath Thakur for the petitioner and learned counsel Mr. O. P. Upadhaya for the defendants-respondents.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner against the order dated 10.07.2013 passed by Subordinate Judge-I, Kaimur in Partition Suit No.104 of 1993 whereby the court below rejected the amendment application filed by the plaintiff-petitioner for amendment in the plaint.

3. It appears that the plaintiff filed Partition Suit No.104 of 1993 claiming share in the suit property. Subsequently during the pendency of the suit defendant no.1 gifted all the suit property as well as other ancestral property by four registered gift deeds to defendant nos.2 and 7. At the time of filing the suit the petitioner was minor and subsequently she filed application for amendment

praying for inclusion of other ancestral property which has been gifted by the gift deed and also challenging the registered gift deed on the ground that those gift deeds are void deeds and those have been executed during pendency of the suit. By the impugned order the application has been rejected.

4. Learned counsel for the petitioner submitted that the court below has wrongly decided the amendment application on merit as it is settled principles of law that at the time of consideration of the amendment application the court should not decide the merits of the amendment sought for. Further the court below has rejected the amendment application on the ground that the District Judge has directed to dispose of the suit expeditiously within three months. Further the court below has rejected the amendment application holding that one of the gift deeds has been held to be genuine and valid gift deed by Subordinate Judge-IV in another suit and further these facts are not brought on record by amendment by the plaintiff within three years of her attainment of majority. According to the learned counsel, the court below should have considered that whether the amendment sought for by the plaintiff is necessary for just decision of the controversies between the parties or not but erroneously rejected the same.

5. On the other hand, the learned counsel for the

defendants-respondents submitted that the court below has also found that the plaintiff-petitioner had the knowledge of this fact but never brought to the notice of the Court and, therefore, it is in violation of proviso to Order 6 Rule 17 of the Code of Civil Procedure.

6. It is settled principles of law as has been held by Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, (2006) 4 SCC 385** that while considering the amendment application the Court should not go into the merits of the amendment sought for. The merit can be gone into at the time of hearing of the suit. So far the submission of learned counsel for the defendants-respondents that the amendment sought for is in violation of proviso to Order 6 Rule 17 of the Code of Civil Procedure is concerned, the Hon'ble Supreme Court in the cases of **State Bank of Hyderabad Vs. Town Municipal Council, (2007) 1 SCC 765** and **Sumesh Singh Vs. Phoolan Devi & Ors., (2009) 12 SCC 689** has held that proviso to Order 6 Rule 17 of the Code of Civil Procedure introduced by Amendment Act (no.2 of 2002) will not be applicable in the pleadings or the suit instituted prior to 1st July 2002. Admittedly in present case the partition suit has been filed in the year 1993. So far the limitation point is concerned

admittedly the gift deeds have been executed during the pendency of the partition suit itself. Therefore, even if there is prima-facie a case of limitation is made out at best, it will be an issue between the parties as to whether the relief claimed by the plaintiff is barred by law of limitation or not but at the time of hearing of the amendment application this issue also cannot be decided. So far the submission of respondents that the District Judge has directed to dispose of the suit within three months is concerned, it may be stated that for speedy disposal of the suit the fundamental principles of Code of Civil Procedure cannot be flouted.

7. In view of the above facts and circumstances of the case, on the ground of delay the learned court below could not have rejected the amendment application. Therefore, the impugned order is not sustainable in the eye of law and accordingly, this impugned order is set aside and the plaintiff's amendment application is allowed. The plaintiff shall incorporate the amendment within the stipulated period prescribed in the Code of Civil Procedure.

8. Thus this writ application stands allowed.

Harish/-

(Mungeshwar Sahoo, J)

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