

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18852 of 2010

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1. Md. Sallauddin Khan S/O Late Abdul Gani Khan R/O Vill. + P.O.- Kerua, P.S.- Giriyak, Distt.-Nalanda
 2. Md. Shoaib Khan S/O Late Abdul Gani Khan R/O Mauza (Vill. + P.O.) - Kerua, P.S.- Giriyak, Distt.- Nalanda
 3. Md. Irfan Khan @ Bihari Khan S/O Late Abdul Bhaw Khan R/O Mauza (Vill. + P.O.) - Kerua, P.S.- Giriyak, Distt.- Nalanda
 4. Md. Rizwan Khan @ Sanichar Khan S/O Late Abdul Bahaw Khan R/O Mauza (Vill. + P.O.) - Kerua, P.S.- Giriyak, Distt.- Nalanda
 5. Md. Shahnewaz Khan S/O Late Mohib Khan R/O Mauza (Vill. + P.O.) - Kerua, P.S.- Giriyak, Distt.- Nalanda
 6. Md. Ehsan Khan S/O Late Mohib Khan R/O Mauza (Vill. + P.O.) - Kerua, P.S.- Giriyak, Distt.- Nalanda
 7. Md. Shawan Khan S/O Late Mohib Khan R/O Mauza (Vill. + P.O.) - Kerua, P.S.- Giriyak, Distt.- Nalanda

.... Petitioner/s

Versus

1. Md. Anwar Khan S/O Late Jamal Khan R/O Vill.-Kerua, P.S.- Giriyak, Distt.- Nalanda
2. Md. Izhar Khan S/O Late Jamal Khan R/O Vill.-Kerua, P.S.- Giriyak, Distt.- Nalanda

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 19404 of 2010

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1. Md. Sallauddin Khan S/O Late Abdul Gani Khan R/O Vill.- Kerua, P.S.- Giriyak, Distt.- Nalanda
2. Md. Shoaib Khan S/O Late Abdul Gani Khan R/O Mauza - Kerua, P.S.- Giriyak, Distt.- Nalanda
3. Md. Irfan Khan @ Bihari Khan S/O Late Abdul Bahaw Khan R/O Mauza - Kerua, P.S.- Giriyak, Distt.- Nalanda
4. Md. Rizwan Khan @ Sanichar Khan S/O Late Abdul Bhaw Khan R/O Mauza - Kerua, P.S.- Giriyak, Distt.- Nalanda
5. Md. Shahnewaz Khan S/O Late Mohib Khan R/O Mauza - Kerua, P.S.- Giriyak, Distt.- Nalanda
6. Md. Ehsan Khan S/O Late Mohib Khan R/O Mauza - Kerua, P.S.- Giriyak, Distt.- Nalanda
7. Md. Shwan Khan S/O Late Mohib Khan R/O Mauza - Kerua, P.S.- Giriyak, Distt.- Nalanda

.... Petitioner/s

Versus

1. Md. Anwar Khan S/O Late Jamal Khan R/O Vill.-Kerua, P.S.- Giriyak, Distt.- Nalanda
2. Md. Izhar Khan S/O Late Jamal Khan R/O Vill.-Kerua, P.S.- Giriyak, Distt.- Nalanda

.... Respondent/s

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Appearance :

(In CWJC No. 18852 of 2010)

For the Petitioner/s : Mr. DRONACHARYA

For the Respondent/s : Mr. Devendra Prasad Singh

(In CWJC No. 19404 of 2010)

For the Petitioner/s : Mr. DRONACHARYA

For the Respondent/s : Mr. Devendra Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 11-08-2015

C.W.J.C. No. 18852 of 2010

Plaintiffs of Title Suit No. 76 of 2006 have filed C.W.J.C. No. 18852 of 2010 to assail the order dated 4.4.2009 passed by the Subordinate Judge-I, Nalanda at Biharsharif in Title Suit No. 76 of 2006 rejecting the petition filed by the plaintiffs for amendment in the plaint.

For the sake of convenience, the status of the parties will be referred as they stood before the Trial Court.

The plaintiffs filed the suit for declaration of the title and on such declaration the respondent-defendant be directed to vacate the house. Further prayer was to direct to pay arrear of rent as well as future rent till delivery of possession. The defendant (respondent herein) appeared and filed their written statement on 8.8.2007. Considering the averments made in the written statement that previous Title Suit No. 21 of 1950 filed and resulted in compromise and Title Suit No. 133 of 1974 filed for specific performance of contract was decided ex-parte and on that basis, a plea was taken that the lis has



been decided in previous cases, the plaintiffs, on acknowledgement of facts, filed the amendment petition for further declaration that decree of Title Suit No. 21 of 1950 was a forged and fabricated document which was obtained by practicing fraud and also controverting the facts relating to ex-parte decree under Order VI Rule 17 of the Code of Civil Procedure (for short 'the Code'). The purpose was to meet the averments made in the written statement and to challenge the case of compromise and alleged sale. Such petition (Annexure-1) was filed on 14.3.2008 stating reasons for such amendment in the plaint. The plaintiffs sought insertion of few paragraphs as paragraph 11(ka), 11(kha) and 11 (ga) in the plaint and also sought amendment in paragraph 15 which sets out relief(s). The defendant filed rejoinder thereto on 17.7.2008 (Annexure-2). The Trial Court after hearing the parties rejected the amendment petition by the impugned order dated 4.4.2009. The Court took the view that by such amendment in the plaint and the relief portion thereof, the plaintiffs wanted to get the decree passed in Title Suit No. 21 of 1950 and Title Suit No. 133 of 1974 set aside. Be it noted that in the light of ex-parte decree passed in Title Suit No. 133 of 1974 for specific performance of contract, a sale deed was executed by the Court in favour of the defendants. The Court further found such relief barred by limitation. The Court also found unpardonable delay in filing such amendment petition. For

better appreciation, this Court would set out hereinbelow the reasonings of the Trial Court in rejecting the prayer seeking amendment in the plaint:-

“Admittedly W.S. was filed on 8.8.07 and copy of the same was received by plaintiff’s counsel on 8.8.07, present amendment petition has been filed on 14.03.08. It means that present petition has been filed almost after more than five months. Beside it, the plaintiffs have already sought reliefs such as eviction of the defendants on the ground of tenancy, defaulter in payment of rent and now want to add relief of setting aside decree passed in T.S. 21/50 and T.S. 133/74 as well as cancellation of sale deed dated 24.04.80 executed by the court in pursuance of decree passed in T.S. 133/74. In my opinion if proposed amendment is allowed to be incorporated, it will cause multiplicity of suit. Apart from it, it appears prima facie that present amendment petition is time barred as said decree were passed in the year 1950 and 1974 and alleged sale deed was executed on 24.04.80 and present petition has been filed taking the knowledge the said decrees from filing of W.S. In my opinion, knowledge of the said decrees has been taken only to avoid limitation.”

Heard Mr. Dronacharya for the plaintiffs-petitioners in support of the writ petition and Mr. Devendra Prasad Singh for the defendant-respondent.

It has been contended *inter alia* by the Counsel for the petitioners that the order rejecting the prayer of the plaintiffs is bad in law being contrary to the spirit of the provision contained in Order VI Rule 17 of the Code and different interpretations given thereto by the Court. The dominant purpose for incorporating the provision is to avoid multiplicity of litigation. The Trial Court completely failed to



appreciate the same and thereby passed an order which has caused not only miscarriage of justice but would breed more litigations. In support of the contention, he has relied on **2002 (2) PLJR 187(SC) (Prem Bakshi Vs. Dharam Dev.)** [Paragraphs 2 and 6] and **(2001) 2 SCC 472 (Ragu Thilak D. John vs. S. Rayappan)**. In his submission, if the order passed is contrary to the letter and spirit of the provisions of the Code then this is a fit case where this Court should exercise its power of superintendence in order to rectify the illegality and do justice between the parties.

Mr. Devendra Prasad Singh, per contra, supported the impugned order and also the reasons the Trial Court assigned for rejecting the application of the plaintiffs filed under Order VI Rule 17 of the Code. In support of his contention, he has placed reliance on the case of **Most Sumitra Devi Vs. Yogendra Choudhary (2000 (1) PLJR 495)**.

In **Ragu Thilak D. John (supra)**, in view of certain facts revealing subsequently, an application under Order VI Rule 17 of the Code for amendment in the plaint was filed which was rejected by the Trial Court and affirmed by the High Court on the ground that amendment, if allowed, would result in introducing a new case and cause of action. Further, by such amendment, the nature of the suit shall be changed and the same was barred by limitation. The Apex

Court noticed the purpose and object of Order VI Rule 17 of the Code as enunciated in diverse judgments in paragraph 5 thereof held as under in paragraph 6 thereof:

“6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimize the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for.”

Dwelling on the said issue, the Apex Court again in the case of *Prem Bakshi (supra)* reiterated the following principle in paragraph 6 of the report:

“6. Now the question is whether the order in question has caused failure of justice or irreparable injury to respondent No. 1. It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the order side as to the plea, which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party.”

Seen thus, the reasons assigned by the Trial Court for declining the prayer of the plaintiffs under the impugned order do not

appear proper and sub-serving the cause of justice.

The respondents have relied in support of his contention on *Most. Sumitra Devi (supra)*. In my view, the factual depiction of this case is entirely different. The suit was not for eviction on the ground of personal requirement of the landlord. The subsequent events referred to in the proposed amendment were not sought to be made the basis of eviction rather they were said to be made the basis for perpetuation of possession obtained on the basis of ex-parte decree which was set aside. In these factual background, the Court, found the amendment sought to be made not bona fide and thereby sub-serving the cause of justice.

In view of the aforesaid, this Court finds sufficient cause to invoke its power of superintendence to set aside the impugned order dated 4.4.2009 which will sub-serve the cause of justice by minimizing the litigations. One of the basic principles for incorporating the provisions is to minimize multiplicity of litigation between the parties. If the amendments are allowed, the Court is required to frame issues and all contentions raised by the defendants can be raised for consideration and adjudication. The Court below shall allow the amendment on imposition of cost as deemed expedient.

The writ application is allowed. The order dated 4.4.2009 passed by Subordinate Judge-I Nalanda at Biharsharif in Title Suit No.

76 of 2006 is quashed.

No order as to cost(s).

C.W.J.C. No. 19404 of 2010

Heard Mr. Dronacharya for the plaintiffs-petitioners in support of the writ petition and Mr. Devendra Prasad Singh for the defendants-respondents.

The writ petition has challenged the order dated 25.11.2008 passed by Subordinate Judge-I Biharsharif, Nalanda in Title Suit No. 76 of 2006 rejecting the petition dated 18.10.2008 filed by the plaintiffs to take the thumb impression and signature of the plaintiff to be kept in safe custody in view of the case put up by the defendants that a compromise was arrived and decree was passed in Title Suit No. 21 of 1950.

In view of the order which I have passed in C.W.J.C. No. 18852 of 2010, this Court grants the plaintiffs a liberty to approach the Trial Court for the said relief which, if prayed, shall be considered and disposed of afresh in accordance with law.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

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