

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17008 of 2012

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1. Rohit Ahluwalia S/O Brij Mohan Singh Ahluwalia R/O Ahluwalia Building , New Dak Bunglow Road, P.S.-Gandhi Maidan, Distt-Patna
 2. Mohit Ahluwalia S/O Brij Mohan Singh Ahluwalia R/O Ahluwalia Building , New Dak Bunglow Road, P.S.-Gandhi Maidan, Distt-Patna
 Petitioner/s

Versus

1. Smt. Nilam Kumari W/O Sri Bipin Bihari Prasad Singh R/O Mohalla-Chowk Shikarpur, Jangali Prasad Lane, P.S.-Chowk, Distt-Patna
 2. Ram Kripal Singh S/O Late Hanuman Prasad Singh R/O Mohalla-Chainpura, P.S.-Bypass, Distt-Patna
 3. Nalanda Forgims And Engineering Pvt. Ltd, Kankarbagh Road, Patna-20 Through Its Managing Director Sri Chandradeep Prasad S/O Sri Ganauri Mahton R/O Vill-Parthu, P.O.-Parthu, P.S.-Ekangarsarai, Distt-Nalanda, At Present Residing At Karahyee Factory , Near Rajgir Railway Crossing , P.O.-Rajgir , P.S.-Rajgir, Distt-Nalanda
 Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashish Kumar, Advocate
 For the Respondent/s : Mr. Uma Shankar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

8 15-12-2015 Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. Challenge in this petition is the order dated 01.05.2012 passed by Sub Judge 5th Patna City in Title Suit No. 103/2009 (Smt. Nilam Kumari v. Ram Kripal Singh & Ors) whereby and whereunder prayer of the respondent/plaintiff relating to amendment in the plaint along with relief relating to petitioners have been allowed.

3. Bereft of unnecessary details, it is evident that a suit for specific performance for contract has been filed by the



respondent no.1 in the year 2009. Curiously enough, from paragraph-6 thereof, it is evident that to justify impleading of petitioners/defendant-3rd set, it has been incorporated that in spite of having knowledge of inter se transaction having effected in between plaintiff as well as defendant, 1st set and 2nd set and further, the deed of agreement dated 18.02.2007, defendant 3rd set got sale deed in their favour at the end of defendant 2nd set. Although, plaintiff had approached the defendant 3rd set (petitioner) not to indulge themselves in such kind of activity. However, from the relief it is evident that plaintiff had not asked for any kind of relief against defendant 3rd set (petitioner). Plaintiff allowed the suit to sail and then lastly on 16.03.2012, a prayer was made to amend the plaint including that of relief portion. One set of amendment was disallowed while another set of amendment was allowed which happens to be subject matter of instant petition.

4. For better appreciation, apart from other amendments, the proposed amendment relating to relief no. 1(A) is quoted hereinbelow:-

“That the sale-deed dated 28.07.2008 executed by Srikant in favour of defendant no. 3 and 4 is illegal, fraudulent and fictitious and the same is not binding upon the plaintiff”.



5. It is needless to say that the procedural law is a hand made and on account thereof, at different occasions there happens to be permissibility of its relaxation by the different judicial pronouncements and on account thereof, even having presence of rigour under 2002 Amendment, that is not the rigour to be applied in its true sense to defeat the ends of justice. However, such recourse should not be allowed to be adopted when the right so accrued is found duly defeated by other statutory provisions.

6. From the plaint impugned, Annexure-1, it is apparent that plaintiff had full knowledge with regard to execution of sale-deed in favour of defendant 3rd party and the aforesaid document happens to be that of year 2008.

7. Then in that circumstance, the prayer for challenging the validity of the aforesaid document would have been within the period of three years which, the plaintiff failed to exercise. Apart from this, from the petition filed on behalf of plaintiff asking for amendment (Annexure-2) also did not incorporate the fact as to why and under what circumstances, the aforesaid exercise was not taken up within the stipulated period of three years and further, from the order impugned it is also evident that the learned lower court had not condoned the delay. Not only this, the learned lower court had not considered whether the relief so sought for happens

to be barred by the law of limitation.

8. That being so, the order impugned is set aside.

Petition is allowed.

(Aditya Kumar Trivedi, J)

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