

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4554 of 2015

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Mahanth Chaudhary & Ors

.... Petitioner/s

Versus

Gyanti Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 24-11-2015 Although the I.A. No.6905 of 2015 has been listed under the heading for orders on petitions which has been filed by the petitioners praying for stay of further proceeding in Title Suit No.355 of 2003, the learned counsel, Mr. Ashok Kumar for the petitioners submitted that the court below is not granting further time, therefore, the writ application itself may be heard on merit in admission matter.

Accordingly, I heard the learned counsel for the petitioners in admission matter also.

This application under Article 227 of the Constitution of India has been filed by the defendants-petitioners against the order dated 09.02.2015 passed by the learned Sub Judge III, Gopalganj in Title Suit No.355 of 2003 whereby the court below has allowed the amendment application filed by the plaintiffs-respondents.

It appears that a partition suit was filed by the plaintiffs-respondents. Subsequently, amendment application was filed praying therein to add further properties which has been allowed by the court below by the impugned order.

The learned counsel for the petitioners submitted that earlier in Title Suit No.157 of 1982 which was filed by the plaintiffs-respondents for partition, the plaintiffs-respondents had filed an affidavit to the effect that in fact, the gifted properties are the exclusive properties of the defendants-petitioners which has been annexed as Annexure-4 to this writ application. However, by amendment, now the plaintiffs-respondents are again trying to make the gifted property as the subject matter of the partition suit. The learned court below has, therefore, wrongly allowed the amendment application.

Perused the impugned order. It appears that the court below has observed that by the amendment, the nature of the suit is not changed and also the amendment sought for is minor in nature. Admittedly, as has been admitted by the learned counsel for the petitioners, still evidences have not been started. Therefore, the question is as to whether gifted property has been admitted to be the property of defendants or not or that the plaintiffs-respondents admitted in earlier suit that the properties of the gift



deed belonged to the defendants is a matter to be considered finally and at the time of consideration of the amendment application, the Court is not required to go into the merit of the allegation and counter allegation made by the parties as has been held by the Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal and others v. K.K.Modi and others, (2006)4 Supreme Court Cases 385**. The Hon'ble Supreme Court further in the case of **Lakha Ram Sharma v. Balar Marketing Private Limited, (2008) 17 Supreme Court Cases 671** held that it is settled law that while considering whether the amendment is to be granted or not the court does not go into the merits of the matter and decide whether or not the claim made therein is bonafide or not. That is a question which can only be decided at the trial of the suit. It is also settled law that merely because an amendment may take the suit out of the jurisdiction of the court is no ground for refusing that amendment.

Again, the Hon'ble Supreme Court in the case of **Rajkumar Gurawara vs. S.K.Sarawagi and Company Private Limited and Another, (2008) 14 Supreme Court Cases 364** has held that a pre trial amendment could have been allowed liberally as the opposite party would not be prejudiced because he will have an opportunity of meeting the amendment sought to be made. In

the present case, admittedly, the evidence of the parties has not yet started, therefore, there is no question of any prejudice to the petitioners arises.

The learned counsel relied upon a decision of the Supreme Court in the case of Radhika Devi vs. Bajrangi Singh & Others, 1996(2) BLJR 1270(SC). It appears that in that case, the amendment was sought for praying for declaration that the gift deed was illegal and fraudulent gift deed. The Supreme Court found that, that relief claimed by the plaintiffs was barred by law of limitation and, therefore, the amendment was refused. In the present case, the plaintiffs are only adding some properties in the suit for partition. In my opinion, therefore, the decision relied upon by the learned counsel for the petitioners is not applicable in the present case.

In view of the above facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court, I do not find any illegality in the order passed by the court below. Accordingly, this writ application is dismissed. Consequentially, the I.A. is also rejected.

(Mungeshwar Sahoo, J)

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