

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.489 of 2016**

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Ravindra Chaudhary & Ors

.... Appellant/s

Versus

Subodh Sah & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bajarangi Lal

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 06-09-2016

Heard Learned counsel, Mr. Bajrangi Lal, appearing for the petitioners and learned counsel, Mr. Alok Kumar Jha, appearing for respondent No.1.

2. Perused the order dated 20.04.2016 passed by the Sub-Judge-12, Vaishali at Hajipur in T.S. No. 447 of 2012, whereby the learned counsel below has allowed the amendment application filed by the plaintiff seeking to amend the relief portion adding a relief to the effect that the sale deed dated 13.11.1941 is forged, fabricated, illegal, not acted upon without consideration and ineffective.

3. Learned counsel, Mr. Bajrangi Lal, appearing for the petitioners raised a short question that the amendment sought for by the plaintiffs-respondents is barred by law of limitation. For the first time, this relief is claimed by one in January, 2016 and therefore, the court below could not have allowed the amendment application filed by the plaintiffs.

4. On the other hand, learned counsel for the respondents

submitted that the facts have already been stated in the plaint itself but by mistake the relief could not be claimed. In such circumstances, when the evidence of the plaintiffs is going on, no prejudice is caused to the petitioners if amendment is allowed, as such, the court below has rightly allowed the amendment application.

5. The Hon'ble Supreme Court in the case of ***L.C. Hanumanthapa Vs. H.B. Shivakumar***, reported in ***2016 (1) SCC 332*** has held that all amendments ought to be allowed which satisfy the two conditions; (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Thus, the amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same i.e. can the amendment be allowed without injustice to the other side, or can it not? Thus, courts will, as a rule, decline to allow amendments, if a fresh suit on the amended claim

would be barred by limitation on the date of the application.

6. In the present case, admittedly, the facts regarding the existence of the sale deed of the year 1941 has already been mentioned in the plaint, which has been filed in the year 2012. The amendment application has been filed on 08.01.2016. According to Articles 58 and 59, the period for declaration regarding the sale deed is only three years from the date when it came to knowledge of the party seeking declaration regarding the sale deed. Therefore, now, at this stage, if the suit is filed by the plaintiff claiming any declaration with respect to the sale deed of the year 1941, it will be barred by law of limitation and therefore, the court below has wrongly exercised the jurisdiction vested in it by law and, thereby, the order has been passed contrary to the provisions and settled principle of law laid down by the Supreme Court.

7. In the result, this civil miscellaneous application is allowed. The impugned order is set aside. The amendment, sought for, by the plaintiffs is, hereby, rejected.

Brajesh/A.F.R.

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(Mungeshwar Sahoo, J)