

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.609 of 2016**

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Bipat Singh

.... Appellant/s

Versus

Most. Urmila & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ratan Kumar Sinha

For the Respondent/s : Mr.

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

3 26-09-2016

Heard the learned counsel, Mr. Ratan Kumar Sinha for
the petitioner.

Perused the impugned order dated 16.02.2016 passed by
Sub Judge XIII, Hajipur, Vaishali in Title Suit No.230 of 1997
whereby the learned Court below rejected the amendment
application filed by the plaintiff on the ground of delay.

From perusal of the impugned order, it appears that
Court below found that the plaintiff got knowledge about the five
sale deeds in the year 1998 itself but for the first time, this
amendment application has been filed in the year 2016.

The learned counsel for the petitioner relied upon a
decision of the Hon'ble Supreme Court in the case of **State of
Madhya Pradesh v. Union of India and another, 2011(12)
Supreme Court Cases 268** and submitted that all amendments
should be allowed if it is necessary for determination of the

controversies between the parties.

From perusal of the amendment application, it appears that the amendment sought for by the plaintiff for declaration that five sale deeds of the year 1998, which have been obtained by the purchasers pursuant to the agreement, are illegal, void and not binding on the plaintiff. It is not disputed that the plaintiff got the knowledge about these sale deeds as far back as in the year 1998. From perusal of the impugned order, it further appears that the plaintiff's evidence has already been closed.

The Hon'ble Supreme Court in the case of **L.C. Hanumanthappa v. H.B.Shivakumar, (2016) 1 Supreme Court Cases 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, 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: 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.”

In the case of **Voltas Limited v. Rolta India Limited**, (2014) 4 Supreme Court Cases 516 also, the Hon’ble Supreme Court has held that Court should decline amendment if a fresh suit on the amended claim would be barred by limitation on the date of application. A time barred claim cannot be asserted after the prescribed period of limitation.

In the present case, as stated above, the amendment application has been filed in the year 2016 wherein challenge has been made regarding the five sale deeds which are of the year 1998.

The Hon’ble Supreme Court in the case of **Abdul Rahim & Ors. v. Sk. Abdul Zabar & Ors.**, AIR 2010 Supreme Court 211 has held that a suit for cancellation of transaction

whether on the ground of being void or voidable would be governed by Article 59 of the Limitation Act. The suit, therefore, should have been filed within a period of three years from the date of knowledge of the fact. Here, admittedly, the fact of existence of the sale deed was known to the petitioner as far back as in the year 1998 itself.

In view of the above facts and circumstances of the case and position, in my opinion, the learned Court below has rightly rejected the amendment application, as such, no case for interference in supervisory jurisdiction is made out.

Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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