

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1246 of 2016

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Vishwanath Mandal & Anr

.... Petitioner/s

Versus

Ram Lakhan Mandal & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 26-10-2016

Heard the learned counsel for the petitioners and the
learned counsel for the respondents.

Perused the impugned order dated 04.11.2015 passed
by Sub Judge IV, Supaul in Title Suit No.145 of 2000 whereby the
learned Court below allowed the amendment application filed by
the plaintiffs-respondents seeking for declaration that the
registered Bajidaba of the year 1979 is sham and forged.

The learned counsel for the petitioners submitted that
the relief which is being sought by way of amendment is barred by
law of limitation and, therefore, the Court below could not have
allowed the amendment application but the Court below without
considering this aspect of the matter, has allowed the amendment
application on the ground that it will not change the nature of the
suit.

On the other hand, the learned counsel for the
respondents submitted that in the plaint itself, the plaintiff has

disclosed the legality or otherwise of the registered Bajidaba and it is not the fact that the plaintiff had no knowledge but because of mistake, the relief could not be claimed.

It appears that this question raised by the petitioner is disputed question regarding limitation. The Hon'ble Supreme Court in the case of **Ragu Thilak D. John v. S. Rayappan and others, (2001) 2 Supreme Court Cases 472** has held that when there is arguable case regarding the question of limitation, the same can be made an issue in the suit and the same shall be decided along with other issues. In the instant case, as has been admitted by the learned counsel for the petitioners, still today, only issues have been framed.

In such view of the matter, I find no jurisdictional error in the impugned order passed by the Court below. However, it is made clear that since the issue of limitation which is raised by the defendant-petitioner that the relief claimed by the plaintiff by way of amendment is barred by law of limitation, the Court below shall recast the issue and include this issue and the same issue shall also be decided along with other issues.

In the result, this writ application is disposed of with the aforesaid direction.

Saurabh/-

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(Mungeshwar Sahoo, J)