

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1494 of 2016**

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Md. Muslim

.... Appellant/s

Versus

Md. Neyaz Akhtar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Mishra

For the Respondent/s : Mr.

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

2 22-12-2016

Heard learned counsel for the petitioner.

Perused the impugned order dated 29.09.2016 passed by learned Subordinate Judge-IV, Munger in Title Partition Suit No.82 of 1999 whereby the learned court below rejected the amendment Application filed by the plaintiff-petitioner for amendment in the relief portion.

From perusal of the impugned order, it appears that the court below rejected the amendment on the ground that the relief claimed by the petitioner now at this stage is barred by law of limitation.

It appears that the partition suit has been filed by the plaintiff-petitioner. By way of amendment the plaintiff is now seeking to add a relief to the effect that on adjudication of facts and circumstances the court be pleased to pass a decree of nullity and void sale deed dated 11.05.1994 and the gift by defendant



no.1 to his wife in lieu of *dainmohar* on 03.04.1975.

It will not be out of place to mention here that onwards the wordings are not drafted correctly but the meaning is that the plaintiff is seeking for a declaration with respect to the sale deed of 1994 and the gift of the year 1975.

The Hon'ble Supreme Court in the case of **L.C. Hanumanthappa Vs. H.B. Shivakumar (2016) 1 Supreme Court Cases 332** has clearly held that it is a 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. This is the view of the Supreme Court also in (2009) 10 Supreme Court Cases 84. Admittedly here in the present case, the plaintiff is now seeking the relief for declaration with respect to sale deed of the year 1994 and the gift of the year 1975 which are admittedly barred by law of limitation and if the plaintiff will file a separate suit claiming the said relief at this stage, it will also be barred by law of limitation. Therefore, the plaintiff cannot be allowed to amend the relief which is now barred by law of limitation.

Thus, this civil miscellaneous application is dismissed.

Harish/-

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(Mungeshwar Sahoo, J)

