

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.28 of 2015

In

Civil Writ Jurisdiction Case No. 22259 of 2011

=====

Bhagar Yadav & Ors

.... Petitioner/s

Versus

Yoginder Yadav & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

9 13-01-2016 Heard the learned counsel, Mr. Sanjeev Kumar for the
petitioners.

Earlier after hearing the learned counsel, this Court by terms of order dated 28.09.2015, issued notice to the opposite parties. In spite of service of notice, nobody appeared on behalf of the opposite parties.

This review application has been filed by the petitioners, who were respondents in CWJC No.22259 of 2011, for review of the order dated 03.01.2014 passed by me in the aforesaid writ application.

The learned counsel for the petitioners submitted that in fact, there was a typing mistake in the name of the wife of Dharichhan Raut. In place of Sarali Devi, the wife, the name of Cherai Devi was typed who was the daughter of Dharichhan Raut.



According to the plaintiffs, their case is that they are the sons of Cherai Devi, the daughter of Dharichhan Raut. The defendants-petitioners filed written statement claiming their title on the basis of gift deed dated 19.06.1974 executed by Most. Sarali Devi, widow of Dharichhan Raut but because of typing mistake, in place of Sarali Devi, it was wrongly typed as Cherai Devi. Pursuant to this written statement and defence of the petitioner, the plaintiff filed amendment application challenging the gift deed and prayed for a relief with regard to the same which was allowed on 28.07.2004 in the trial Court. Thereafter, the defendants also filed an amendment application for amendment of written statement praying for correction of the name of Sarali Devi in place of Cherai Devi. Without disposing the said amendment application, the trial Court passed the judgment, therefore, the amendment application before the appellate Court was necessitated and the petitioners filed amendment application for correction of the name and the appellate Court allowed the said amendment application finding that it is only a typing mistake. According to the learned counsel, while disposing of the writ application, this Court without considering the amended portion of the plaint and without considering the fact that although, it seems to be admission of the case of plaintiff but is only a typing mistake committed error of

record and passed the order under review.

Perused the plaint annexed with this review application. By amendment, the plaintiff prayed for declaration that the alleged gift deed dated 19.06.1974 executed by Most. Sarali Devi, alleged wife of Dharichhan Raut, in favour of Bagar Yadav, defendant No.1 is quite wrong, illegal, forged and fabricated document as the alleged executant was not the wife of Dharichhan Raut rather she was imposter lady and by which the alleged vendor never acquired any right, title or possession and alleged deed remain ineffective throughout. Now, in view of this amendment, the plaintiff admitted that Sarali Devi executed the gift deed in favour of defendant No.1. The only dispute is whether Sarali Devi was widow of Dharichhan or not. So far Cherai Devi is concerned, the defendant is not disputing the fact that she is the daughter of Dharichhan.

It will not be out of place to mention here that in the writ application filed by the plaintiff, the plaint was not annexed and this amended portion of the plaint was not brought to the notice of this Court. It further appears that the fact that after amendment in the plaint, an amendment application was filed by the defendant in the trial Court, was also not brought to the notice of this Court. In such view of the matter, this Court was not

knowing the fact that the plaintiff themselves have admitted that the defendants are claiming title through the gift deed said to have been executed by Sarali Devi. The trial Court admittedly has not passed any order on the amendment application filed by the petitioner in the trial Court.

So far the admission in the written statement is concerned, the defendant-petitioner admitted the fact that Cherai Devi is the daughter of Dharichhan and the plaintiffs are the son of Cherai Devi. Still that fact is not disputed nor it is withdrawn by the petitioner by amending the written statement. It appears that whole claim of the petitioner is based on the registered gift deed dated 19.06.1974 which is admittedly executed by Sarali Devi.

From perusal of the statements in the written statement, by mistake, it was pleaded that Cherai Devi executed the gift deed vide paragraph 8 of the written statement. It appears that it is the admitted fact that one registered gift deed has been executed by Sarali Devi. The question is now, therefore, whether the defendant cannot be allowed to correct the name of the donor in the registered gift deed because it is mentioned that Cherai Devi executed the gift deed. In my opinion, this is only hyper technical objection and this is the objection of the plaintiff that the defendants have admitted the plaintiff's case. As stated above,



while disposing of the writ application by order dated 03.01.2014, the amendment application filed before the trial Court by the defendant for correction of the name and the amended portion of the plaint allowed by the trial Court was not brought to the notice of this Court and thereby the plaintiff approached this Court with unclean hand by suppressing this fact.

The Hon'ble Supreme Court in the case of **S.P. Chengalvaraya Naidu(Dead) by LRS. v. Jagannath (Dead) By LRS. and others, (1994) 1 Supreme Court Cases 1** has held that “the courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. The Hon'ble Supreme Court has also said that we have no hesitation to say that a person who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

As stated above, vital facts were suppressed before this Court and the order dated 03.01.2014 was obtained by the plaintiff-respondent, as such, the errors is apparent on the face of the order itself in view of the above facts. Accordingly, the order dated 03.01.2014 is hereby recalled. The amendment allowed by the lower appellate Court appears to be only formal and is for correction of the defects only which neither amounts to admission

of the plaintiff's case nor withdrawal of the admission. Therefore, order passed by the lower appellate Court dated 23.05.2011 in Title Appeal No.57 of 2009 by learned 2nd Additional District Judge, West Champaran at Bettiah is restored.

In the result, this review application is allowed and the writ application being CWJC No.22259 of 2011 is hereby dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--