

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1061 of 2016**

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Shyama Nand Thakur

.... Appellant/s

Versus

Leela Nand Thakur & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shivjee Pandey

For the Respondent/s : Mr.

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

2 10-11-2016

Heard learned counsel, Mr. B.K.M. Tripathi,

appearing for the petitioner.

2. Perused the impugned order dated 10.08.2016 passed by the Sub-Judge-1st Araria in T.S. No. 92 of 2009, whereby the learned court below rejected the application filed by the plaintiff under Order 6 Rule 17 C.P.C. whereby the plaintiff prayed for addition of a relief for declaration that the compromise decree passed in T.S. No. 697 of 1996 dated 05.07.1996 is void and non-est.

3. It may be mentioned here that the decree, which is being sought to be declared as void and non-est, is dated 05.07.1996. The Hon'ble Supreme Court in the case of *Nurul Hoda Versus Bibi Raifunnisa & Ors. reported in 1996 (7) SCC 767* has held that Article 59 of the Limitation Act will come into play. The period for seeking such declaration is only three years

from the date of right to sue accrued. In the plaint itself as has been submitted by the learned counsel for the petitioner reference has been made with respect to the decree. However, the prayer is being sought to be made by way of amendment in the year 2016. This view of the Hon'ble Supreme Court has been reiterated in ***AIR 2010 SC 211***.

4. In view of the above fact it becomes clear that prayer for amendment, which is being made by the plaintiff, is now barred by law of limitation. The Hon'ble Supreme Court in the case of ***L.C. Hanumantha Versus H.B. Shivakumar reported in 2016 (1) SCC 332*** has held that all amendments should be allowed provided it is not barred by law of limitation. If on the date of amendment, a separate suit is barred by law of limitation then by way of amendment the said relief cannot be inserted in the suit.

5. In view of the above settled principles of law, since the claim of the petitioner is barred by law of limitation, the amendment cannot be allowed and accordingly, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)