

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2846 of 2014

In
C.R. 158 of 2011

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Mostt. Sheo Kumari Devi & Ors

.... Petitioner/s

Versus

Smt. Tapeswari Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghwendra Kumar

For the Respondent/s : Mr. Chandra Shekhar Singh

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

- 12 18-01-2016 **1.** Heard the learned counsel, Mr. Waliur Rehman, for the petitioner and the learned counsel, Mr. Chandra Shekhar Singh, for the respondent.
- 2.** It appears that notices were issued in the case and after notice, the respondents have appeared.
- 3.** For the purpose of this application, the facts may be narrated in short to the effect that the plaintiff respondent filed suit for declaration of the four deeds of gift are void, illegal, inoperative and not binding on the plaintiff and for recovery of possession of the property involved in the aforesaid four registered gift deeds. The suit was decreed. The First Appeal was dismissed and also Second Appeal was dismissed. In Execution Case No. 02 of 2009, the Judgment debtor filed an objection praying for

dismissal of the execution case on the ground that the decree holder has prayed for recovery of possession of the properties which are not the subject matter of the suit. The Court below by the impugned order has rejected the said objection.

4. At the time of hearing, the learned counsel, Mr. Waliur Rehman, submitted that different properties was described in the schedule of the plaint whereas in the execution petition, different property has been mentioned. But the learned Court below considering some observation of the High Court in Second appeal has rejected the objection petition filed by the decree holder.

5. On the other hand, the learned counsel appearing on behalf of the respondent submitted that in fact because there was defect in the plot numbers and area before the lower appellate Court, the amendment application was filed which was allowed by the appellate Court but prior to expiry of 14 days as provided under Order 6 Rule 18 CPC, the amendment allowed could not be incorporated in the plaint as the Judgment was reserved by the appellate Court. This matter was considered by the High Court in Second Appeal and held that because of none incorporation inoperative in the plaint, the Judgment and Decree passed by the lower appellate Court or the trial Court cannot be said to be

vitiated. The second appellate Court also observed that the plaintiff simply want to clarify those lands already described in the deed of gifts, i.e, the amendment was prayed for to bring on record the correct number on record of this case.

6. Perused the impugned order passed by the Court below. It appears that the Court below considered all these aspects of the matter and held that the decree holder applied for delivery of possession in respect of lands described in four deeds of gift, i.e., ext. 'G' series, the application filed by the petitioner has got no merit and accordingly rejected the same.

7. Admitted fact is that amendment application was allowed by the lower appellate Court. The only objection raised by the Judgment debtor is that in the plaint, the amended portion could not be incorporated. The reason assigned is that prior to expiry of 14 days, the appeal was heard and then the Judgment was reserved. In such circumstances, the question is whether the order of amendment which was allowed cannot be allowed to be incorporated so as to disentitle the plaintiff to pray for recovery of possession of the property. The only objection is to this effect that it is not incorporated in the plaint. There is nothing to show that how the petitioner is being prejudiced by the execution of the



decree which was confirmed by the High Court in Second Appeal. The correction or the incorporation of the amendment will be only an empty formality. It is admitted fact that now the plaintiff is praying for recovery of possession of the property formally covered under four registered gift deeds. The objector is not disputing this fact about the identity of the property covered under the four registered deeds. Now, therefore, it cannot be said that by the impugned order, the Court has acted in the manner not permitted by law. It cannot also be said that the petitioner is prejudiced in any way. It also cannot be said that by the impugned order, any injustice has been done to the petitioner nor it has occasioned failure of justice. The objection is nothing but a formal objection which technical. It is settled law that technicalities should not come in the way of administration justice.

8. In view of the above position, the impugned order needs no interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

Sanjeev/-

(Mungeshwar Sahoo, J)

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