

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.41 of 2016**

=====

Deva Ashish Kumar Rajak & Anr

.... Appellant/s

Versus

Ranjit Kumar Rajak & Ors

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

=====

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

ORAL ORDER

4 01-09-2016

Heard learned Senior Counsel Mr. S.S. Dvivedi for the petitioners and learned Senior Counsel Mr. Surendra Kumar Singh for the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the defendant nos.10 and 11 against the order dated 19.03.2016 passed by Subordinate Judge-V, Bhagalpur in Title Partition Suit No.139 of 2014 whereby the learned court below allowed the amendment application filed by the plaintiffs-respondents.

3. Admittedly the suit is partition suit and still no issue has been framed, therefore, it is pre-trial amendment.

4. The learned Senior Counsel for the petitioners submitted that by way of amendment a relief has been sought by the plaintiffs to the effect that the gift deed of the year 2000 in favour of these petitioners is illegal, void and not binding on the

plaintiffs and this relief could not have been allowed to be incorporated by way of amendment in view of the decision of the Supreme Court, **(2016) 1 Supreme Court Cases 332 (L.C. Hanumanthappa Vs. H.B. Shivakumar)**.

5. On the other hand, learned Senior Counsel for the respondents submitted that this decision relied upon by the petitioners is not applicable in the present facts and circumstances of the case. In the present case, there is specific averment in paragraph 8 of the amendment application to the effect that the plaintiffs-respondents had no knowledge about the existence of the gift deed in favour of the present petitioners herein. Therefore, in view of either Article 58 or in view of Article 59 of the Limitation Act the right to sue accrues to the plaintiffs-respondents only after they came to know about the existence of the gift deed i.e. after filing the written statement. In such circumstances, this question as to whether the right to sue accrues on what date is a mixed question of law and fact and is not a pure question of law. Therefore, at this stage the court below could not have rejected the amendment application on presuming the fact that the claim i.e. the relief, which is being sought to be introduced by way of amendment, is barred by law of limitation. The learned Senior Counsel further relying on the decision of the Supreme Court,

(2001) 2 Supreme Court Cases 472 and A.I.R. 2009 Supreme Court 1177 submitted that in all cases the amendment cannot be refused on the ground that the relief claimed is barred by law of limitation. If it involves disputed question of fact then also in this regard an issue is to be framed and that can be tried and gone into at the time of hearing of the suit itself but on that ground the amendment application should not be rejected.

6. Perused the impugned order and also the amendment application filed by the petitioners, which is Annexure-3 to this civil miscellaneous application. At paragraph 8 the plaintiffs clearly asserted that the plaintiffs came to know about the existence of the gift deed after perusal of the written statement filed by the petitioners. In such circumstances, it cannot be said that it is admittedly the relief is barred. The question of limitation in the present case appears to be a mixed question of law and fact which can only be decided on the basis of the evidences that may be adduced by the parties.

7. Therefore, I find no jurisdictional error in the impugned order. Thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Harish/-

U			
---	--	--	--