

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13459 of 2014

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Budhi Nath Singh son of Late Jagdish Prasad Singh Resident of village AND P.O. Biratpur, P.S. Sonbarsa, District - Saharsa, Member Sri Chandi Nyas Parishad, Biratpur.

.... Petitioner/s

Versus

1. Dina Nath Singh @ Deena Prasad Singh son of Late Dharnidhar Singh.
2. Rambilas Singh son of Jwala Prasad Singh.
3. Baleshwar Prasad Singh son of Late Ambika Prasad Singh.
4. Upendra Narayan Singh son of Late Jogi Prasad Singh.
5. Arun Kumar Singh.
6. Shankar Kumar Singh.
7. Chunnu Singh All sons of Jalandhar Singh.
8. Ram Prasad Yadav son of Late Muni Lal Yadav.
9. Manoj Kumar son of Sri Bandelal Yadav All resident of village - Gajipaita, P.S. Sonbarsa, District – Saharsa.
10. Ashok Kumar Singh son of Late Brahmanand Prasad Singh Resident of village - Biratpur, P.S. Sonbarsa Raj, District - Saharsa, Member Sri Chandi Nyas Parishad, Biratpur.
11. Sohan Singh son of Chandika Prasad Singh Resident of village - Manguar, P.S. Sonbarsa, District - Saharsa, Member Sri Chandi Nyas Parishad, Biratpur.
12. Raghwendra Narayan Singh son of Late Upendra Narayan Singh Resident of village - Sahsaal, P.S. Sonbarsa, District - Saharsa, Member Sri Chandi Nyas Parishad, Biratpur.
13. Sri Parmanand Singh son of Late Phudan Prasad Singh Resident of village - Biratpur, P.S. Sonbarsa, District - Saharsa, Chairman Sri Chandi Nyas Parishad, Biratpur.
14. Sri Madan Prasad Singh son of Mundrika Prasad Singh Resident of village - Biratpur, P.S. Sonbarsa, District - Saharsa, Secretary Sri Chandi Nyas Parishad, Biratpur.

.... Respondent/s

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Appearance :



For the Petitioner/s : Mr. Naresh Chandra Verma, Adv. with

Mr. Ram Kumar Singh, Adv.

For the Respondent/s : Mr. Ram Janme Maharaj, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-09-2016

Heard Mr. Naresh Chandra Verma, learned counsel
appearing on behalf of the petitioner.

The legal sustainability of the impugned order by which
the learned court below has allowed the prayer for amendment as
prayed on behalf of the applicants in the miscellaneous case filed
under Order 9 Rule 13 C.P.C. has been questioned in the present
application under Article 227 of the Constitution of India.

There is no dispute about the fact that an ex parte decree
was passed against the applicant in Title Suit No. 52 of 1998 for
setting aside the same, the Miscellaneous Case No. 46 of 2013 has
been filed under Order 9 Rule 13 C.P.C. During the pendency of the
said miscellaneous case, a petition was filed on behalf of the
applicants seeking to incorporate the fact relating to Vakalatnama
which had been found to be filed on their behalf in the suit alleging
the same to be forged and fabricated document. The learned court
below by the impugned order has allowed the said prayer.

Mr. Verma, learned counsel for the decree-holder-



petitioner has submitted that the learned court below has committed error of jurisdiction in passing the impugned order allowing the amendment in face of the fact that the miscellaneous case itself was barred by limitation and the delay was not condoned upto the date of passing of the impugned order. It has been contended that without condonation of delay the proceeding of Order 9 Rule 13 would be deemed non est and no order could have been passed by the learned court below. Elaborating his submission, Mr. Verma, has canvassed that earlier the applicants of the miscellaneous case (respondents in the present application) had come out with the case that they had no knowledge of the suit and no summons had been served upon them but now by seeking amendment the applicants want to incorporate the fact explaining the Vakalatnama which had been there on the record of the title suit. Learned counsel has relied upon the decision in the case of *The State of West Bengal & Ors vs Somdeb Bandyopadhyay, 2009 (3) P.L.J.R. (SC) 34* and in the case of *Food Corporation of India Vs. S.N. Nagarkar, A.I.R. 2002 S.C. 204* in support of his submission that no interim order could have been passed by the court in a proceeding barred by limitation.

After considering the submissions and the perusal of the impugned order as well as the materials on record, it is manifest that the respondents have filed the miscellaneous case under Order 9



Rule 13 C.P.C. praying for setting aside the ex parte decree passed in the suit. In the petition for amendment filed under Order 9 Rule 13 C.P.C. the applicants have sought to incorporate the statement in the nature of explanation with regard to the Vakalatnama which is there on the records of the title suit by making statement that the same is forged and fabricated document. The provision for amendment in the pleading as contained under Order 6 Rule 17 C.P.C. is applicable to a miscellaneous proceeding under the C.P.C. as well by virtue of Section 141 C.P.C. Under the provision of Order 6 Rule 17 C.P.C., the amendment of pleading has been permitted to be made at any stage of the suit or proceeding. It is true that the Apex Court in the aforesaid two judgments as relied upon by Mr. Verma, learned counsel for the petitioner has ruled that no interim order could be passed in a proceeding without condonation of delay as the said proceeding would be non est in the eye of law. However, it does not appear that the principle laid down in the above two decisions by the Apex Court would be attracted in the case of amendment of pleading. Moreover, an order allowing or refusing amendment of pleading does not appear to be an interim order in the nature as had fallen for consideration by the Apex Court in the aforesaid two decisions.

Considering the matter from another angle also, the reason for seeking amendment in the pleading has been stated to be



the knowledge with regard to the Vakalatnama which has been gathered by the applicant-respondents only after the perusal of the original record of the suit. But even then by the proposed amendment, the applicants have only sought to deny the genuineness of their signatures on those Vakalatnama. As such, it is evincible that even if this amendment is allowed, the issue of bar of limitation is still to be considered by the court. The learned court below has considered the facts and circumstances and thereafter has passed the order according to the settled principle of law. This Court, therefore, is not inclined to interdict the impugned order.

The present application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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