

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.986 of 2016**

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Sarita Devi

.... Appellant/s

Versus

Ram Nath Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shakti Suman Kumar

For the Respondent/s : Mr.

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

2 28-10-2016

Heard the learned counsel for the petitioner.

Perused the impugned order dated 21.03.2016 passed by Sub Judge III, Danapur in Title Suit No.54 of 2010 whereby the learned Court below allowed the amendment application filed by the plaintiff-respondents.

The grievance of the petitioner is that the amendment application has been filed by the plaintiff praying for addition of a relief with respect to the registered gift deed dated 29.03.2011 as time barred but the Court below has allowed the amendment application.

The amendment application has been annexed as Annexure 2 series. From perusal of paragraph 4 of the amendment application, it appears that the plaintiffs specifically pleaded that during the pendency of the suit, they came to know about the existence of the registered gift deed. Therefore now, the question



regarding limitation becomes disputed question of fact. The same can be decided on the basis of the evidence. It is not admitted here by the plaintiff that they had knowledge on the date of the execution of the registered gift deed. The further admitted fact as has been submitted by the learned counsel for the petitioner is that still evidences have not been commenced.

The Hon'ble Supreme Court in the case of **Ragu Thilak D. John v. S. Rayappan and others, (2001) 2 Supreme Court Cases 472** has held that “where it is arguable that relief sought by way of amendment would be barred by law of limitation, held, amendment should still be allowed and the disputed matter made the subject-matter of an issue.”

As stated above, in this case, still evidence has not been adduced by the parties. Therefore, this issue which is being raised by the petitioner that the relief is time barred can be decided by the Court at the time of the final hearing. According to the learned counsel, the execution of the registered gift deed has been admitted by the plaintiff in the application filed for addition of the petitioner as party-defendant in the suit is concerned, it may be mentioned here that again it relates to the merit of the amendment sought for. This question is not admitted in view of the statement made by the plaintiff. Moreover, when it is directed that this issue

of limitation should be decided ultimately on the basis of the evidences, at this stage, while considering the application for amendment, the merit should not be gone into.

The Hon'ble Supreme Court in the case of **Rajesh Kumar Aggarwal and others v. K.K.Modi and others, (2006) 4 Supreme Court Cases 385** has held that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merit of the amendment and the merit of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This view has been reiterated by the Supreme Court again in **(2008) 17 Supreme Court Cases 671**.

In the result, I find no reason to interfere with the impugned order. Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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