

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.869 of 2016**

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Ram Shankar Prasad

.... Appellant/s

Versus

Chotu Lal Sah & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Navjot Yesu

For the Respondent/s : Mr.

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

ORAL ORDER

2 16-09-2016 Heard the learned counsel, Mr. Navjot Yesu, for the
petitioner.

Perused the impugned order dated 20.07.2016 passed by
Sub Judge XII, Vaishali at Hajipur in Title Suit No.358 of 2000
whereby the learned Court below has rejected the amendment
application filed by the plaintiff petitioner.

It appears that the plaintiff petitioner filed title suit praying
for declaration of title and non-title of the defendant. The
defendants appeared and filed contesting written statement in the
year 2001 itself. In the written statement, they specifically stated
that the suit has been sold by them to the outsider in the year 1973.
It appears that thereafter issues were framed and the parties went
into trial. The plaintiff's evidence was closed. Defendant also
examined many witnesses, at this stage amendment application

has been filed by the plaintiff petitioner seeking for a declaration that the sale deed of the year 1973 alleged to have been executed by the defendant in favour of the purchasers, is forged and illegal sale deed. In the amendment application, the plaintiff also sought addition of the purchasers as party in the suit. The Court below has rejected this application filed by the plaintiff for amendment.

Admitted fact is that as far back as in the year 2001 in the written statement, the defendant specifically pleaded that they have executed the sale deed in favour of the purchasers in the year 1973. The plaintiff, therefore, had the knowledge about the existence of this sale deed when the written statement was filed. At that stage, the plaintiff neither filed application for adding the purchaser as party nor he filed application for seeking amendment for declaration relating to the sale deed of the year 1973.

For the first time in the year 2016, amendment application has been filed by the plaintiff and declaration has been sought for with respect to the sale deed and because this declaration is sought for, he prayed for adding the purchaser as party.

The Hon'ble Supreme Court **(2016) 1 SCC 332 L.C. Hanumanthappa Vs H.B.Shivakumar** has held that **‘all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, (b) of**



being necessary for the purpose of determining the real questions in controversy between the parties. Thus, amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test, therefore, still remains the same: can the amendment be allowed without injustice to the other side, or can it not? Thus, Court will as a rule decline to allow amendment if a fresh suit on the amended claim would be barred by limitation on the date of the application.'

In the present case, admittedly the claim sought by the plaintiff by way of amendment is barred by law of limitation as the sale deed is of the year 1973 and Article 58/59 of the Limitation Act provides three years from the date of knowledge to annul or set aside or for any declaration with respect to any

document. Thus, in my opinion, this is not a case for interference in exercise of supervisory jurisdiction.

Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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