

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9344 of 2015

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Suresh Yadav

.... Petitioner/s

Versus

Birenchi Yadav

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 25-04-2016

Heard the learned counsel, Mr. Mritunjay Kumar for the petitioner.

The learned Court below by order dated 11.05.2015 rejected the amendment application in Title Appeal No.1 of 2013. It appears that title suit was filed by the plaintiff-appellant-petitioner for partition. The defendant-respondent claimed title on the basis of gift deed of the year 1997. The suit was dismissed. The plaintiff-appellant then filed title appeal before the lower appellate court. The District Judge held that the amendment sought for by the plaintiff before this appellate Court is barred by law of limitation and secondly, that the suit is of the year 2005 and, therefore, proviso to Order VI Rule 17 C.P.C. provides that no amendment can be allowed at this stage and accordingly, has rejected the amendment application.

The Hon'ble Supreme Court in the case of **Volta Limited v. Rolta India Limited, (2014)4 Supreme Court Cases 516** has held that Court should decline amendments if a fresh suit

on the amended claims would be barred by limitation on the date of application vide paragraph 30 of the said decision. In the present case, the gift deed is said to have been executed by the father of the petitioner in the year 1997.

The Hon'ble Supreme Court in the case of **Abdul Rahim & Ors. v. Sk. Abdul Zabbar & Ors., AIR 2010 Supreme Court 211** has held that a suit for cancellation of transaction whether on the ground of being void or voidable would be governed by Article 59 of the Limitation Act. The suit, therefore, should have been filed within a period of 3 years from the date of knowledge of the fact that the transaction which according to the plaintiff was void or voidable is taken place.

In the present case, the only ground taken by the plaintiff-appellant-petitioner is that because of no advice the prayer for cancellation of the gift deed could not be made. In my opinion, this is not a ground for allowing the amendment which is barred at this stage if separate suit is filed for cancellation of the gift deed. Thus, the Court below has rightly rejected the amendment application and I find no reason to interfere with the same.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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