

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.419 of 2016

=====

Dhrub Narayan Singh Son of Late Deodhari Singh R/o Mohalla - Nooranganj, P.S. Sasaram, District - Rohtas

.... Petitioner

Versus

1. Baikunth Singh Son of Basant Singh R/o village - Khaira, P.S. Sasaram, District - Rohtas
2. Shyam Sundar Singh Son of Shivjagi Singh R/o Village - Darigaon, P.S. Sasaram (Darigaon), District - Rohtas
3. Lalan Singh Son of Gaya Singh
4. Nawrang Singh
5. Madan Singh
6. Ramji Singh Sl. Nos. 4 to 6 son of Late Dahin Singh
7. Most. Lachho Devi Wife of Late Dahin Singh Sl. No. 3 to 7 R/o village - Karserua, Post & P.S. Darigaon, District - Rohtas
8. Dhanwati Devi D/o Late Dahin Singh, Wife of Gauri Singh R/o village - Kharilia, P.S. Darigaon, District - Rohtas
9. Lav Kush Singh
10. Rakesh Singh Sl. No. 9 and 10 Son of Late Lalji Singh R/o Karserua, Post & P.S. Darigaon, District Rohtas
11. Deobansh Singh Son of Jawahir Singh R/o village - Shiguhi, P.S. Sasaram, District - Rohtas
12. Radhey Shyam Singh Son of Mahesh Singh
13. Jagropan Singh Son of Dhaneshwar Singh Sl. No. 12 & 13 R/o Village - Nawgai, P.S. Sasaram, District - Rohtas
14. Ram Nagina Singh Son of Baliram Singh
15. Ramayan Singh Son of Shivbachan Singh
16. Kunti Devi D/o Shivbachan Singh
17. Kaushalya Kuer Wife of Late Rajendra Singh
18. Pintu Kumar Son of Late Rajendra Singh
19. Chitranjan Kumar Son of Late Rajendra Singh
20. Archana Kumari D/o Late Rajendra Singh Sl. No. 14 to 20 R/o Mauja - Rangpur, P.S. Sasaram, District - Rohtas
21. Arun Kumar Upadhyay Son of Harbansh Upadhyay R/o Mohalla - Karansarai, P.S. Sasaram, District Rohtas
22. Sarvdeo Rai
23. Brij Keshwar Sl. No. 22 & 23 son of Jagnarayan Ram R/o village - Semari, P.S. Dinara, District - Rohtas
24. Syed Ahmed Hussain Son of Syed Tabarak Hussain R/o Mohalla - Nooranganj, P.S. Sasaram, District - Rohtas
25. Most. Kaushalya Kuer Wife of Late Shrinarayan Singh
26. Kamal Kumar
27. Dhanji Kumar
28. Santosh Kumar Sl. Nos. 26 to 28 Son of Late Shrinarayan Singh
29. Raj Kumari D/o Late Shrinarayan Singh
30. Om Prakash Singh
31. Shyam Bihari Singh Sl. No. 30 & 31 Son of Late Ramdhari Singh Sl. Nos. 25 to 31 R/o Mohalla - Nooranganj, P.S. Sasaram, District - Rohtas



.... Respondents

=====

Appearance :

For the Appellant/s : Mr.K.N.Chaubey, Sr.Adv.
Mr. Siddharth Harsh, Adv.

For the Respondent/s : Mr. T.N.Maitin, Sr.Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-04-2017

Heard Mr. K.N.Chaubey, learned senior counsel appearing for the petitioner and Mr.T.N.Maitin, learned senior counsel appearing for the respondents.

The plaintiff is the petitioner and the assail in the present application under Article 227 of the Constitution of India to the impugned order by which the learned court below has turned down the prayer of the plaintiff-petitioner seeking amendment in the plaint.

The T.S.No.133/1985 was filed by the plaintiff-petitioner praying for declaration of title over the suit property described in Schedule-A of the plaint. It is not in dispute that the suit has proceeded to the stage where the argument on behalf of the defendants was complete. At that stage, a petition was filed on 18.05.2016 by the plaintiff seeking amendment in the plaint. After hearing the parties, the learned court below has come to the conclusion that the proposed amendment would affect the nature of the suit and has been intended to fill up the lacuna in his case by the



plaintiff. It has also been noticed that the proposed amendments also include the addition of the relief against the sale deeds of the year 1981 which were in full knowledge of the plaintiff who filed the suit in the year 1985 but has not sought any relief against the same. The impugned order has been passed accordingly rejecting the petition for amendment.

Mr.Chaubey, learned senior counsel appearing for the petitioner has emphasized that the learned court below has failed to consider the well established practice that the amendment in the pleadings is to be liberally allowed and the delay is immaterial in cases where the proposed amendment is necessary for final adjudication of the dispute between the parties. It has been contended that in the present case, the proposed amendments are clarificatory in nature as the sale deeds in question have been impliedly impeached in the averments of the plaint. It has also been submitted that the evidence is already on record with regard to the proposed amendments and no fresh evidence is to be adduced even after allowing the amendments. It has also been propounded that all amendments, which would not cause surprise to the other side should be allowed and this principle is fully attracted in the present case.

Mr.Maitin, learned senior counsel appearing for the respondents, however, has supported the impugned order and



has submitted that it is not the case on behalf of the plaintiffs they were ignorant of the sale deeds with regard to which the relief has been sought to be incorporated by the proposed amendment. It has further been contended that on the admitted facts it is manifest that the relief with regard to those sale deeds is barred by limitation and as such the learned court below has committed no illegality in refusing the prayer for amendment. The learned counsel has further submitted that according to the well settled principles a party cannot be allowed to fill up the lacuna in his case by seeking amendment and that too after the argument on behalf of the other side is complete. It has also been contended that this is not a fit case where the jurisdiction under Article 227 of the Constitution of India should be invoked for interdicting the impugned order.

After considering the submissions and perusal of the materials on record as well as the impugned order, it is pellucid that the suit has been filed by the plaintiff in the year 1985 for the sole relief for declaration of title over the suit land. Though the averments made in the plaint (Annexure-1) disclose that the plaintiff has been aware of the deed of Bai Mukasha dated 18.02.1942 and the sale deeds executed in favour of the defendant 1st set on 15.09.1981 and 30.10.1981 and has alleged the same to be fraudulent documents but no relief at all was sought against those deeds in the suit. The suit,



thereafter, has proceeded with the relief for declaration of title over the suit land alone and it is not in dispute that the arguments by the defendant was complete, at which stage, the prayer for amendments in the plaint including the relief with regard to those sale deeds was sought. Demonstrably therefore, the basic structure of the suit would undergo a change by incorporation of the relief against the sale deeds dated 15.09.1981 and 30.10.1981 by amendment. There is also no cogent explanation on behalf of the plaintiff in the amendment petition (Annexure-2) for not seeking the relief against the sale deeds at any prior stage. ***In Sampath Kumar Vs. Ayyakannu, (2002)7 SCC 559*** the apex court has observed as follows:

9. “.....
.....

The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case



generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the later cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case... ”

It is also manifest that any relief against the sale deeds dated 15.09.1981 and 30.10.1981 would stand barred by limitation on the date i.e. 18.05.2016 when such relief has been sought to be incorporated by amendment. The only fact, as emphasized on behalf of the petitioner, that there is averment in the plaint itself against those sale deeds would not arrest the running of the period of limitation. On an identical issue, the apex court in the case of ***Voltas Limited Vs. Rolta India Limited***, (2014) 4 SCC 516 has considered the issue of incorporation of new relief by amendment which is evidently barred by limitation and after taking notice of earlier decisions it has been observed as follows:

“29.....

.....

A contention was canvassed that the appellants had



not come forward with new plea and, in fact, there were material allegations in the plaint to sustain the amendment of the plaint. The Court observed that having allowed the period of several years to elapse from the date of filing the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963 any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent...”

30. ...In Revajeetu builders and Developers Vs. Narayanaswamy and Sons, (2009) 10 SCC 84 while laying down some basic principles for considering the amendment, the Court has stated that as a general rule the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application...”

Tested on the anvil of the above dictums by the apex court, there is no scope left for considering the submission on behalf of the petitioner that in the facts and circumstances of the case, the prayer for amendment with regard to addition of a new relief



against the sale deeds of the year 1981 could have been allowed in the year 2016 on the basis of plea that the amendment should be liberally allowed and also on the basis that the assertions are already there in the pleading. So far as the proposed amendments relating to the execution of the sale deeds in favour of the plaintiff not by the persons mentioned as vendors in the plaint but by their power of attorney holder and introducing the alias name of Mir Fazal Hussain, it is the specific case of the defendants in their rejoinder that it is attempt to fill up the lacuna in his case by the plaintiff by manufacturing a forged power of attorney. The defendants have also objected to the incorporation of the statement regarding the sale of the suit land by the plaintiffs during the pendency of the suit asserting that it is an attempt by the plaintiff who has been all through claiming to be in possession to salvage his case by coming forward with the case that the suit land is in possession of his purchasers. There is again no cogent explanation on behalf of the plaintiff either in the amendment petition (Annexure-2) or even during the course of submission before this Court as to why these crucial facts were not introduced at earlier stages or at least before adducing of the evidence by the defendants and completion of their argument in the suit. This Court, therefore, finds substance in the submission on behalf of the respondents that the proposed amendments are intended to fill up the lacunae in his case



by the plaintiff.

For the above reasons and discussions, this Court declines to exercise its jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

This application is accordingly dismissed.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--

