

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23767 of 2013

IN

C.R. 657 of 2007

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Ram Ashray Singh son of Late Bhagwat Singh @ Tanik Singh, resident of village –
Mokama, Moldiar Tola, PS-Mokama, District-Patna. Petitioner/s

Versus

Satyanarain Singh son of late Rajnandan Singh & Ors. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Adv.

Ms. Vagisha Pragya Vacaknavi, Adv.

For the Respondent/s : M/s V. Raman Pd. Singh and Mritunjay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-12-2017

This application has been filed for setting aside the order dated 18th January 2007 passed by the learned Sub-Judge-II, Barh in Title/Partition Suit No. 66 of 1996 whereby and whereunder the learned Court below rejected the amendment petition filed on behalf of the plaintiff.

2. Heard learned counsels for the petitioner as well as the respondents.

3. The fact, in brief, is that the petitioner filed the aforesaid suit before the learned Court below in the year 1996 for partition of his ancestral property. The contesting defendants filed their written statement on 1st April 1997. In the written statement they claimed property also on the strength of registered deed of gift which was executed on 10th July 1968 by Mosmat Paira Kunwar in favour of Sudama Devi and Savitri Devi. When the case was pending for



evidence of defendant, the plaintiff (petitioner) filed amendment petition for introducing some new fact. The plaintiff sought relief for declaration with respect to registered deed of gift as illegal, fraudulent, ineffective and void. The learned Court below after hearing both sides rejected the amendment petition observing that the proposed amendment is barred by limitation. The plaintiff wants declaration with respect to the document which was executed in the year 1968. The plaintiff had full knowledge about the said document as the defendants had asserted their right on the strength of said deed of gift in their written statement which was filed in the year 1997.

4. In this regard, the learned counsel for the respondents cited a Ruling reported in AIR 1996 SC 2358 (Radhika Devi vs. Bajrangi Singh and others). The fact of the present case is squarely covered by the ratio decided by the Hon'ble Apex Court in the above case. The amendment petition was filed for declaration with respect to deed of gift which was executed on 28th July 1978. The Hon'ble Apex Court at para 6 of the judgment has observed as follow:-

“The ratio therein squarely applies to a fact situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. In the present case, the gift deed was executed and registered as early as July 28, 1978 which is a notice to



everyone. Even after filing of the written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint.

5. The fact of this case is similar to the case decided by the Hon’ble Apex Court. The defendant in clear words has stated in their written statement about the registered deed of gift. The written statement was filed on 1st April 1997 and after 9 years of filing of written statement and that too when the witnesses were being examined by the defendants . The proposed amendment is thus barred of limitation as held by the Hon’ble Supreme Court in above case.

6. In the above facts and circumstances, I do not find any merit in the present application and the same is, accordingly, dismissed.

(Sanjay Kumar, J)

Maresh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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