

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.721 of 2016

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1. Smt. Asha Devi W/o Sobhnath Sharma Resident of village - Taripar, P.S. Bikram, Distt. - Patna at Present residindent at village - Murika, P.S. Sigori (Paligang), District – Patna Appellant/s

Versus

1. Sri Kameshwar Singh S/o Late Sheodeo Singh
2. Sri Umeshwar Singh S/o Late Sheodeo Singh
3. Saket Kumar
4. Sanjay Kumar
5. Shailesh Kumar
6. Rakesh Kumar
7. Nilesh Kumar all are S/o Sri Umeshwar Singh All are resident at village - Murika, P.S. Sigori (Paliganj), District – Patna Respondent/s

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Appearance :

For the Appellant/s : Mr. Mohit Raj

For the Respondent/s : Ms. Sugandha Prasad

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 08-12-2017

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 28.06.2016 passed by learned Sub-Judge, Paliganj, Patna in Title Partition Suit No. 19 of 2009 whereby the learned Sub-Judge has dismissed the petition of petitioner for amendment in the plaint.

The petitioner is plaintiff in the suit. The plaintiff filed the suit for partition of the property mentioned in the schedule of the plaint. The plaintiff made her father as defendant No.1. The plaintiff filed a petition for amendment in the plaint stating therein that during the pendency of the suit defendants Nos. 2 to 7 in collusion with each other got executed a false and forged deed of gift by defendant No.1, father of the plaintiff, in favour of the defendants Nos. 2 to 7 on 28.08.1997 and 29.08.1997 without the consent of the mother of the plaintiff, wife of defendant No.1. The learned Sub-Judge rejected the petition on 28.06.2016 holding that if the amendment is allowed



the same would change the nature of the suit. Being aggrieved, the petitioner/ plaintiff filed this Civil Misc. petition.

The learned counsel for the petitioner submits that the petitioner filed the amendment petition on the basis of disclosure made by the defendants in their written statement that father of the petitioner had executed deed of gift on 28.08.1997 and 29.08.1997 but neither the petitioner nor her mother had knowledge about the execution of deed of gift in favour of defendants Nos. 2 to 7. It is further submitted that amendment is simple and narration of all the facts and the deed of gift is required to be set aside as it is not in accordance with law but the learned court below has committed illegality and material irregularity in rejecting the petition of the petitioner for amendment in the plaint.

On the other hand the learned counsel for the respondents submits that written statement on behalf of defendants Nos. 2 to 7 was filed on 09.06.2010 stating therein that defendant No.1, brother of defendant No.2, executed deed of gift with regard to the land of his share in favour of defendant No. 2 and his sons on 28.08.1997 and 29.08.1997 and the plaintiff came to know about the deed of gift on 09.06.2010 itself. The period of filing the suit for setting aside the deed of gift on the ground that it is illegal is three years. The plaintiff filed the amendment petition on 14.06.2010, i.e., after six years of the date of filing of the written statement but the plaintiff wanted to incorporate such facts and prayed to set aside the deed of gift. The right of the plaintiff is barred by law of limitation and the petitioner cannot seek this relief in accordance with law.

After considering the submission of both sides, it is evident that, of course, the plaintiff is daughter of defendant No.1, who died during



the pendency of the suit. The plaintiff seeks partition of the property. The defendants appeared and filed written statement on 09.06.2010 disclosing the fact that defendant No.1 had executed deed of gift in favour of his brother and nephews, defendants Nos. 2 to 7, on 28.08.1997 and 29.08.1997. The plaintiff came to know this fact at least on the date of filing of written statement, i.e., 09.06.2010 but the reasons best known to her the plaintiff filed amendment petition for amending the prayer in the suit and setting aside the deed of gift after more than six years.

The principles governing the amendment of plaint or pleadings of a party is that all the amendment, which are required for complete and effective adjudication of the dispute between the parties, should be allowed if cause of action is not barred. The same view is expressed in the case of *Rajesh Kumar v. K. K. Modi*, (2006) 4 SCC 385 and in the case of *North Eastern Railway v. Bhagwan Das*, (2008) 8 SCC 511 but in the present case it appears that cause of action of the plaintiff for setting aside the deed of gift is itself beyond the period of limitation and, therefore, I find that the learned Sub-Judge has rightly rejected the prayer for amendment of the plaint.

Having considered the facts aforesaid, I find no merit in this Civil Misc. petition and the same is accordingly, dismissed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16.12.2017
Transmission Date	N.A.

