

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.139 of 2017**

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Triveni Kebat @ Tribeni Kewat

.... Petitioner/s

Versus

Saryu Kebat & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Mishra

For the Respondent/s : Mr.

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

ORAL ORDER

2 28-01-2017

Heard the learned counsel for the petitioner.

Perused the impugned order dated 04.11.2016 passed by the learned District Judge, Munger in S.T.A. No.17 of 2014 whereby the learned court below has rejected the amendment application filed by the plaintiff.

It appears that the plaintiff-petitioner filed Title Suit No.125 of 2008 praying for declaration of his title and confirmation of possession over the suit property. The plaintiff claimed title on the basis of two registered sale deed of the year 2002. The suit was dismissed. Thereafter, the petitioner filed title appeal before the District Judge. Before the appellate court, amendment application was filed by the petitioner seeking amendment in the plaint alleging that the judgment and decree passed in Title Suit No.58 of 2002 is a nullity and void, therefore, the delivery of possession was given illegally by the court and in the relief portion, the plaintiff prayed for the amendment to the



effect that the sale deed dated 24.08.2007 executed in favour of the defendant, Meera Devi is void sale deed and is nullity. By the impugned order, the court below has rejected the amendment application.

Admittedly, the suit has been filed in the year 2008. The parties have adduced their respective evidences and the suit has been dismissed. Before the appellate court, these facts are sought to be introduced by the plaintiff-petitioner by way of amendment. These facts are entirely new facts and for that, no evidence has been adduced by the plaintiff and could not have been adduced because of the fact that the amendment sought for are not the part of the pleading.

After amendment of the Code of Civil Procedure, with effect from 01.07.2002 a proviso has been added to Order VI Rule 17 C.P.C. and, therefore, unless due diligence is shown by the plaintiff, the court has no jurisdiction to allow the amendment. The court can allow the amendment only if the court is satisfied that the plaintiff even after due diligence could not know the fact which are sought to be brought on record by way of amendment. In the present case, the only explanation given by the petitioner is that because of mistake, the facts could not be brought. In my opinion, this explanation cannot be accepted.

So far the relief claimed by the plaintiff-petitioner with



respect to declaration of the sale deed dated 24.08.2007 is concerned, if a separate suit is filed by the plaintiff now then the suit will be barred because of Article 58/59 of the Limitation Act. The plaintiff admits that at the time of filing the suit, the plaintiff had the knowledge about the existence of the sale deed dated 24.08.2007. He did not pray for any relief regarding declaration with respect to the sale deed within the period prescribed under the Limitation Act.

The Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers Vs. Narayanaswami and sons & others, (2009) 10 Supreme Court Cases 84** has held that if the amendment sought for is barred by limitation, the same cannot be allowed. Again, the Supreme court in the case of **L.C. Hanumanthappa v. H.B. Shivakumar, (2016) 1 Supreme Court Cases 332** has reiterated the same view that if amendment is barred by law of limitation, then it cannot be allowed.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction and thus, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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