

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3618 of 2013

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Jamwanti Devi W/O Rama Jee Mishra Resident Of Village Basdila, P.O. Laxmipur Babu, P.S. Patherwa, District - Kushi Nagar (Uttar Pradesh), At Present Daughter Of Radha Kishun Sukla Resident Of Village Niyamat Guriyaw, P.O. Semariya, P.S. Kateya, District - Gopalganj

.... Petitioner

Versus

1. Dwarika Nath Sukla S/O Raghunath Sukla Resident Of Village Niyamat Guriyawa, P.O. - Semariya, P.S. Kateya, District - Gopalganj
2. Sugriw Sukla S/O Dwarika Nath Sukla Resident Of Village Niyamat Guriyawa, P.O. - Semariya, P.S. Kateya, District - Gopalganj
3. Sanjay Sukla S/O Dwarika Nath Sukla Resident Of Village Niyamat Guriyawa, P.O. - Semariya, P.S. Kateya, District - Gopalganj
4. Mithai Devi D/O Raghunth Sukla Resident Of Village Niyamat Guriyawa, P.O. - Semariya, P.S. Kateya, District - Gopalganj
5. Ghiwdhari Devi D/O Raghunath Sukla Resident Of Village Niyamat Guriyawa, P.O. - Semariya, P.S. Kateya, District - Gopalganj

.... Respondents

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Appearance :

For the Petitioner : Mr. Ramesh Ranjan, Advocate
For the Respondents : Mr. R.K.Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-11-2017

The present writ application has been filed for issuance of writ in nature of certiorari directions by quashing the order dated 22.09.2012 passed by learned Additional District Judge, Gopalganj in Title Appeal No.80 of 2005 whereby and whereunder the learned court below dismissed the petition filed under order 6 Rule 17 CPC and refused to amend the plaint.

2. Heard learned counsel for the petitioner and the respondents.



3. The petitioner before this Court had filed title (Partition) Suit No.145 of 1998 against the respondents which was dismissed on contest on 29.07.2005. The petitioner filed Title Appeal No.80 of 2005 before the Court of District Judge against the dismissal of suit. The petitioner filed an amendment petition under Order 16 Rule 17 of CPC for certain amendment in relief portion of the plaint. The petitioner wants to mention 03.12.1928 in place of 19.03.1963.

4. It appears that the Sub-Judge-V, Gopalganj while dismissing the suit has decided issue no.8 against the plaintiff. The court below after going through the pleadings of both the parties framed issue no.7 as follows:-

“whether sale deed dated 19.03.1963 executed by Rajinandan and Triveni Mishra in favour of defendant no.1 is a sham transaction and never acted upon.”

5. The learned counsel for the respondents submits that the petitioner/plaintiff was fully aware with the sale deed dated 03.12.1928. The description of said sale deed stands mentioned in the sale deed dated 19.03.1963 itself. The respondents are purchasers from the sons of Ramakant Mishra. The said Ramakant Mishra had acquired the disputed land by virtue of registered sale deed dated 03.12.1928 from Radhakrishna Shukla and Sudama



Shukla who were admittedly full brother and co-sharers of the petitioner (plaintiff). By seeking amendment, the appellant wants to depart from his earlier admission at the fag end of hearing of appeal. The plaint was amended at the time of trial also and some facts were added in the plaint and now he wants to withdraw the said facts. The amendment if allowed would completely change the nature of case which itself appears to be barred by limitation. The suit was filed in the year 1998. It was filed for declaration with respect to deed executed in the year 1963. The petitioner/appellant now wants to seek declaration with respect to another document which was executed in the year 1928. The said document was in full knowledge of the plaintiff. The another contention of learned counsel for the respondents is that the interest of all the respondents are joint and inseparable. The respondent no.5 died in the year 2011 but no substitution was filed within time. The appellant filed substitution petition and prayed to substitute the legal heirs of respondent no.5 by filing I.A.No.5612 of 2013. The said Interlocutory Application was dismissed by this Court as not pressed as per order dated 28.03.2016 and so the application has abated.

6. Be that as it may. It is not in dispute that the petitioner/(plaintiff-appellant) has filed the amendment petition at



belated staged and that too at the time of argument in the appeal. The trial court after framing issues with respect to the document executed in the year 1963 has adjudicated the matter. By filing the present application, the petitioner wants to amend the relief with respect to the document which was executed on 28.03.1928. The amendment petition will certainly changes the nature of the suit.

7. In view of above discussions, I find that the court below has not committed any jurisprudential error in refusing to amend the plaint and so this Court does not find any reason to interfere with the same. This application is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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