

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20101 of 2012

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Chandra Shekhar Singh & Anr

.... Petitioner/s

Versus

Rajesh Kumar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyapal Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

6 07-08-2017 Heard the learned counsel, Mr. Satyapal Singh for the petitioners and the learned counsel, Mr. Mritunjay Kumar for the respondents.

This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners for setting aside the order dated 01.09.2012 passed by the learned Sub Judge II, Benipur in Title Suit No.26 of 2006 whereby the learned trial court has rejected the amendment application filed by the petitioners praying for amendment of the plaint in the relief portion as well as in the schedule.

It appears that the suit was filed by the plaintiff-petitioners for declaration of title and recovery of possession of the suit property. After commencement of trial, amendment application has been filed by the plaintiff-petitioners praying for amendment in the relief portion and also in the schedule of the



plaint. By the impugned order, the court below has rejected the application considering the proviso to Order VI rule 17 of the C.P.C.

The learned counsel for the petitioner submitted that by mistake, the first relief which is being sought to be added in the relief portion and the second relief which is sought to be added in the relief portion have left to be mentioned. According to the learned counsel, statement of fact has already been stated in the plaint in various paragraphs but no relief could be prayed for with respect to sale deeds. Therefore, it is essential to amend the plaint. So far schedule no.IV is concerned, in paragraph 21, correction is only sought to be made on the date of the sale deed but the court below wrongly rejected the amendment application.

The learned counsel for the respondents opposed the prayer of the plaintiff-petitioners and submitted that in fact, the amendment sought for are either not necessary and essential for determination of the real controversy between the parties. So far the schedule is concerned, the learned counsel for the respondents has got no objection if the correction in the date of the sale deed is made.

Perused the impugned order. Perused the amendment application which has been annexed as Annexure 3 to this writ



application. The plaintiff-petitioners are seeking addition of first relief to the effect that since Ramphal Singh had already sold the property by registered sale deed on 25.09.1972, he had no right to resell it. So far this relief is concerned, it is a question of law and depends on the question of fact that whether he had sold the property by registered sale deed dated 25.09.1972. If he had already sold the property in 1972 automatically it will mean that he will have no authority to resell the same, therefore, this is a question of law and is not necessary to be incorporated in the relief portion. In my opinion, therefore, so far this relief is concerned, it is not necessary for the decision of the real controversy between the parties.

So far the next relief which is sought to be added in the relief portion of the plaint by way of amendment is concerned, the plaintiff is seeking declaration that the registered sale deed dated 16.06.1975 executed by Ramphal Singh is forged, collusive and fraudulent sale deed. The suit has been filed in the year 2006 and in the plaint itself there is reference made by the plaintiff with respect to this sale deed which is in schedule no.IV. However, no relief has been claimed. Now at this stage, if separate suit is filed by the plaintiff claiming this relief then the suit will be barred by law of limitation as according to Article 58/59 of the Limitation



Act the period is only three years.

The Hon'ble Supreme Court in the case of **AIR 2015 Supreme Court 3364 = (2016) 1 Supreme Court Cases 332(L.C. Hanumanthappa v. H.B. Shivakumar)** has held that all amendments should be allowed if no injustice is caused to the other side and if it is not barred by law of limitation. If separate suit is barred on the date of the amendment then the relief which is barred cannot be allowed to be incorporated in the plaint by way of amendment. In the present case, admittedly, the sale deed is of the year 1976. Admittedly, the existence of the sale deed was within the knowledge of the plaintiff as there is reference in the plaint. Now therefore, the relief which is being sought to be added is barred by law of limitation, as such, the same cannot be allowed and the court below has rightly not allowed the same.

So far correction in the date of the sale deed is concerned, it only relates to the correction i.e. typing mistake. The prayer for amendment to that effect as mentioned in paragraph 2 and 3 of the amendment proposed is hereby allowed.

In the result, this writ application is allowed in part. The amendment application so far it relates to addition of relief 'chha' and 'ja' are concerned, those are rejected. The other amendments in schedule IV and the date of sale deed i.e. paragraph 2 and 3 of



the proposed amendment are allowed. The impugned order dated 01.09.2012 passed by Sub Judge II, Benipur in Title Suit No.26 of 2006 is thus modified to the extent indicated above.

(Mungeshwar Sahoo, J)

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