

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1139 of 2016

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Hemant Devi, W/o Sri Rajiv Kumar Singh, Resident of Village- Saukhpur,
P.S.- Supaul, District- Supaul, At present mohalla- Gangjalla, Islamia
Chowk, P.S.+Dist- Saharsa.

.... Appellant/s

Versus

1. Smt. Sweta Singh, W/o Sri Budinath Singh, R/o Nagar Parishad, Saharsa
Mohalla- Kabir Chowk, P.S. & District- Saharsa.
2. Smt. Saveeta Devi, W/o Sri Hare Krishna Singh, R/o Vill- Sukhpur,
P.S.+District- Supaul.
3. Hare Krishna Singh, S/o Late Udit Narayan singh, R/o Vill- Sukhpur,
P.S.+District- Supaul.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar, Advocate
Mr. Neeraj Kumar, Advocate

For the Respondent/s : Mr. Pramod Kumar Sinha,
Mr. Arvind Kumar Sharma
Mr. Chetan Kumar
Ms. Mallika Majumdar
Mr. Prem Kumar

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 25-01-2018 Heard both sides.

The petitioner filed this petition for setting aside the order dated 16.02.2016 passed in Title Suit No.268 of 2013 by which the petition of the petitioner for amendment of the plaint and insertion of the sentence after para 8 of the plaint that the defendant No.2 had made oral gift on a paper and put her signature thereon was lost, has been rejected.

The petitioner is the plaintiff and she is the daughter-in-law



of defendant No.2. Plaintiff filed the suit that defendant No.2 had orally gifted the property to her on the eve of her marriage and sought relief for declaration of sale deed executed by defendant No.2 in favour of defendant No.1 as forged and fabricated. The plaintiff filed amendment petition at the very initial stage because hearing of the suit has not commenced as yet. But the learned Sub Judge vide his order dated 16.02.2016 rejected the amendment petition on the ground that the plaintiff failed to bring any documents about the theft of the aforesaid oral gift and there is interpolation on the date which is below the signature of defendant No.2. The learned counsel being aggrieved by the aforesaid order submitted that the amendment was brought at the very initial stage and it will not change the nature of the suit nor the same will cause any injustice to the other side. The defendant has got every opportunity to file additional written statement, as the hearing of the suit has not yet begun.

On the other hand, the learned counsel appearing on behalf of respondent No.1 and 2 have contended that the amendment is contrary to the law. Section 123 of the Transfer of Property Act provides that no oral gift can be made. Therefore, the amendment has rightly been rejected but I do not find any force in the submission of the learned counsel for the respondent on the simple



ground that the suit of the plaintiff petitioner is based on the oral gift deed itself. The plaintiff only wanted to bring the facts that the Panchanama of the oral deed of gift was stolen or lost. I find that such amendment does not either change the nature of the suit and nor cause any prejudice to the defendants.

Therefore, I find that the learned Sub Judge has committed jurisdictional error to reject the petition for amendment of the petitioner. Accordingly, the order dated 16.02.2016 passed in Title Suit No.268 of 2013 is set aside. The amendment petition is allowed.

Accordingly, this Civil Misc. petition is also allowed.

(Prabhat Kumar Jha, J)

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