

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7671 of 2014

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1. Shyam Sunder Singh Son of Late Dharmdeo Singh
 2. Kalika Singh
 3. Sudhakar Singh Both sons of Late Banaras Singh
 4. Damodar Singh
 5. Rabindra Singh
 6. Pratap Singh
 7. Munna Singh Sl. No. 4 to 7 are sons of late Dinanath Singh, All residents of village - Rajmal Pirari, P.O. Fakuli, P.S. Rivilganj, District – Saran.

.... Petitioner/s

Versus

1. Shekh Gulam Subhan Son of Tafful Hussain, Resident of village - Mahato Musher, P.O. Musher, P.S. Chapra Muffasil, District - Saran
2. Jagdish Singh Son of latye Sheo Dayal Singh, Resident of Village - Pipara, P.O. Pipara, P.S. Aandar, District - Siwan
3. Bhagmani Devi wife of Sheopujan Yadav, Resident of Village - Hasanpura, P.S. Chapra Muffasil, District – Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Nagendra Rai and Navin Nikunj, Advs.
For the Respondent/s : Ms. Sangeeta Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 30-01-2018

I.A. No. 3608 of 2016

Heard both sides on the above I.A. No. 3608 of 2016 as well as on admission matter.

The above application has been filed by the heirs of petitioner no. 1-Shyam Sunder Singh to delete the name of petitioner no. 1 and substitute them in his place. The petitioner no. 1 died on 13.05.2015 leaving behind a son and a daughter as his heirs/representatives as mentioned in paragraph 2 of the interlocutory



application. This application is supported with an affidavit and a vakalatnama duly executed by the heirs of petitioner no. 1 has also been filed.

The prayer as made in the interlocutory application is allowed and the name of petitioner no.1-Shyam Sunder Singh is deleted and his heirs/legal representatives as mentioned in paragraph 2 of the interlocutory application are ordered to be substituted in his place.

The above interlocutory application stands disposed of.

This application has been filed to set aside the order dated 04.03.2014 passed by Sub Judge-I, Saran at Chapra in T.S. No. 590 of 2009 whereby and whereunder the amendment petition of the petitioners was rejected.

Heard learned counsels for the petitioners as well as the respondents.

It has been submitted that the petitioners have filed the aforesaid suit for declaration of title over the land mentioned in schedule-A of the plaint and also for declaration with respect to the sale deeds executed by defendant no. 1 in favour of the defendant nos. 2 and 3 as illegal, void, ineffective and not binding on the plaintiff. By the proposed amendment, the plaintiff wants to add one more relief to get the deed of gift dated 28.02.1966 declared as illegal, void,



ineffective and not binding on the plaintiff. The plaintiff further wants to amend para 14 of the plaint which relates to court fee. It has been submitted that the defendant has asserted his title on the basis of oral gift. Subsequently, he asserted his title on the basis of registered deed of gift which remained in operative. The evidence of both the parties has been closed and the case is pending for argument. The case has to be decided on the basis of evidence which is on record. The plaintiffs do not intend to adduce any oral or documentary evidence.

The learned counsel for the respondents on the other hand submitted that the said deed of gift was executed in the year 1966 and after lapse of about 45 years, the plaintiffs have sought relief for declaration. The amendment is barred by limitation and so the court below has rightly rejected the same. I find that the petitioners have sought relief for declaration of title on the basis of their document and in addition to this relief, the petitioners want one more relief with respect to declaration of deed of gift as illegal and void on the basis of evidence. He has relied on ruling reported in AIR 2004 SC 4105 (Pankaja v. Yellappa) in which the Hon'ble Apex Court at para 12 has observed as follows:-

“So far as the Court's jurisdiction to allow an amendment of pleadings is concerned there can be no two opinion that the same is wide enough to permit amendments even in case where there has



been substantial delay in filing such amendment applications. This Court in numerous cases has held the dominant purpose of allowing the amendment is to minimize the litigation, therefore, if the facts of the case so permits, it is always open to the Court to allow applications in spite of the delay and laches in moving such amendment application.

In view of above principles, the question has to be decided by the trial Court as regards limitation for relief with respect to deed of gift. The impugned order in the facts and circumstances is set aside and amendment as prayed by the petitioner is allowed. The trial Court is directed to decide the suit on the basis of evidence which are already on record in view of submission of the learned counsel for the petitioner.

This application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07/02/2018
Transmission Date	

