

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14123 of 2014

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Sri Ratneshwar Singh son of Kumar Yajneshwar Singh, resident of Bunglow No. 9, G.M. Road, Rajkumar Ganj, Town P.S. Darbhanga, District Darbhanga.

.... Petitioner

Versus

1. Sri Kapileshwar Singh
2. Sri Rajeshwar Singh
Both sons of late Kumar Subeshwar Singh, resident of Ram Bagh Palace, P.S. Town, P.S. District - Darbhanga.
3. Kumar Yajneshwar Singh son of Late Raja Bahadur Kumar Bisheshwar Singh
4. Sri Rajneshwar Singh son of Kumar Yajneshwar Singh
Both residents of Bunglow No. 9 , G.M. Road, Rajkumar Ganj, Town P.S. Darbhanga, District Darbhanga.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Gajendra Jha, Advocate
For the Respondent/s : Mr. Ganpati Trivedi, Sr. Advocate with
Mr. Madan Mohan, Advocate
Mrs. Pallavi Pandey, Advocate
Mr. Love Kush Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

6 19-03-2018 This writ application has been filed for setting aside the order dated 25.04.2014 passed by the learned Subordinate Judge-IV, Madhubani in Title Suit No.55 of 2006 whereby and whereunder the amendment petition of the petitioner to amend the plaint was rejected.

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

3. The petitioner after settlement of issues by the court below filed an amendment petition for adding two paragraphs in



the plaint as paragraph nos. 11 A and 11 B, which runs as follows:-

“11A.That the plaintiff is the eldest son of Kumar Yajneshwar Singh who is the younger brother of the last admitted trustee Late Kumar Jeeveshwar Singh. In his male line the present plaintiff is the eldest male member. Maharaj Dhiraj Dr. Sir Kameshwar Singh had the residuary power to appoint trustee the male line of this family if not by the last Trustee but he predeceased the last trustee. Hence the present plaintiff is entitled to act as trustee.

11B.That Kumar Shubheshwar Singh who is uncle of the plaintiff by misrepresentation of fact got a declaration that he is entitled to be trustee of the said Raj Nagar Religious Trust vide judgment and decree dated 19.12.2000.The plaintiff was not impleaded in that suit. By fraudulent suppression of material fact the decree was obtained illegally as the learned court has no jurisdiction in law to declare him to be trustee. Hence that decree is illegal, nullity and without jurisdiction.”

4. Besides the aforesaid amendment, the plaintiff wants to add one more relief with respect to a declaration that the decree passed in Title Suit No.08 of 96/140 of 2000 passed by Subordinate Judge-III, Madhubani is not binding on the plaintiff as it is illegal, nullity and without jurisdiction.

5. Learned counsel for the petitioner submits that the said amendments do not change the nature of the suit. The said



amendments are purely a clerical error which occurred on account of typing mistake which requires correction.

6. Learned counsel for the respondents, on the other hand, submits that the proposed amendments have been brought after a long delay of about seven years of filing of written statement by the respondents. The defendants-respondents filed written statement on 20.06.2007 and asserted at paragraph 17 of written statement that the plaintiff had knowledge about the said decree from the very beginning. It is not correct to say that the plaintiff got knowledge about the decree for the first time on 15.05.2006. The relief sought to be added itself is barred by limitation. The period of limitation for setting aside of decree is three years. However, the plaintiff has filed the amendment petition on 06.12.2013 i.e. after a delay of about five years and so the court below has rightly refused to amend the plaint.

7. On perusal of annexures available on record, it appears that the suit was filed in the year 2006. The defendants filed written statement on 20.06.2007 and asserted that the plaintiff had knowledge about the said decree from the very beginning. After settlement of issue, the plaintiff remained silent and filed amendment petition on 06.12.2013 to amend the plaint. The main grievance of the respondents is that the amendment, which itself is



barred by limitation, cannot be allowed at such a belated stage of more than five years. It further appears that the plaintiff was not party to the said suit and on account of ignorance of judgment passed in the aforesaid suit, he did not pray for relief against the said decree. The plaintiff, who was necessary party, was not impleaded and so the present amendment petition has been filed for declaration with respect to the said relief.

8. Considering the submission of learned counsel for the petitioner and the fact that he was not a party to the suit, his prayer for amendment appears just and proper for adjudication of dispute between the parties.

9. In view of above facts the impugned order refusing to allow the amendment is set aside and amendment as prayed by the petitioner is allowed subject to payment of cost of Rs.3,000/- to the contesting respondents before the court below. The defendants are at liberty to file written statement with respect to amended plaint and raise the plea of limitation before the court below during trial.

10. Accordingly, this writ application stands allowed.

(Sanjay Kumar, J)

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