

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12320 of 2010

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CHHATHOO SAH

... .. Petitioner/s

Versus

MUNSI SAH & ORS

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Mishra, Adv.

For the Respondent/s : M/s Anirudh Kr. Verma and Vyas Kumar Mishra, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date : 03-12-2018

Defendant of Title Suit No. 372 of 1998 pending in the court of Sub-Judge-VII, Gopalganj is petitioner before this Court. He has filed this writ application for quashing the order dated 14.06.2010 whereby and whereunder the amendment petition filed by respondent 1st set (plaintiff) to amend the plaint was allowed.

Heard learned counsels for the petitioner and the respondents.

The respondent 1st set filed the aforesaid suit for declaration of his possession over the land mentioned in schedule given at the foot of the plaint. After closing the evidence of both the parties when the case was pending for argument, the respondent 1st party filed an amendment petition which after hearing was allowed, subject to payment of cost of Rs. 1,000/-.



The learned counsel for the petitioner submits that the suit was filed in the year 1998. The defendant appeared and filed written statement on 25.07.2000. After settlement of issues, both the parties examined their witnesses and thereafter the case was fixed for argument. In course of argument, the plaintiff filed an amendment petition on 17.02.2010. By the impugned order, the plaintiff was allowed to amend the portion of the plaint. The plaintiff has sought relief to declare the registered sale deed dated 12.03.1962 executed by Mosmat Darpaniya in favour of Dwarka Sah, who was father of the defendants, as forged, fabricated, inoperative and without consideration and on the basis of said sale deed, the defendant did not acquire any title. The plaintiff further added one more relief for recovery of possession if dispossessed from the suit land.

It has been submitted that the relief of the plaintiff is also barred by limitation, as for setting aside the sale deed, the prescribed period of limitation is only three years. The relief which has been allowed to be added at the stage of argument, has prejudiced the petitioner, as the said relief has been sought without any pleading. It has been further submitted that the petitioners in their written statement at para 6 have specifically stated about the said sale deed which is the very basis of their title. The said written



statement was filed on 25.07.2000. The plaintiff was aware of the said pleading but he did not take any step for amendment and he filed the amendment petition after ten years of filing of written statement and that too at the time of argument and so the order allowing the amendment is fit to be set aside.

The learned counsel for the respondents on the other hand submitted that the amendment can be made at any stage of the trial. The learned court below in order to decide real controversy has rightly allowed the amendment and the said order does not require any interference.

After hearing both sides and on going through the impugned order as well as documents on record, I find that the petitioner at para 6 of the written statement, which was filed on 25.07.2000, has specifically stated about the said sale deed. In course of trial, both the parties led evidence according to their pleadings and after closing the evidence when the case was posted for argument, the petitioner filed an amendment petition for seeking relief to get the sale deed of the year 1962 set aside. There is no explanation from the side of the respondent-plaintiff for filing an amendment petition after such a long delay. The observation of the court below that the said amendment does not change the nature of the suit is against the material on record.



In view of above discussions, I find that the order allowing the amendment at the fag end of trial which changes the nature of the suit is not sustainable and is set aside.

This writ application is accordingly allowed.

The office is directed to make necessary correction in the cause title of this writ application as per order dated 25.10.2018.

(Sanjay Kumar, J)

mkchy/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.12.2018
Transmission Date	N/A

