

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14927 of 2011

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Jaleshwar Singh S/O Late Kalichran Singh R/O Mauza-Sisai, Pargana, Barari, P.S. Gore Kothi, at present Address-Mauza-Bangra, Dureji, Pargana-Bara, P.S. Maharajganj, District-Siwan.

.... Petitioner/s

Versus

1. Smt. Ramawati Devi W/O Kailash Rai, D/O Kariman Singh Mauza-Dumra, Pargana-Barai, P.S. Gorea Kothi, Distt.-Siwan.
2. Raj Karan Singh S/O Late Sri Balak Singh R/O Mauza-Dureji Bangra, P.S. Maharajganj, Distt.-Siwan.
3. Surendra Prasad Singh S/O Binda Singh R/O Vill.-Sihauta Bangra, P.S. Maharajganj, Distt.-Siwan.
4. Upendra Singh S/O Late Kalicharan Singh Mauza-Bangra Dureji, Pargana Bara, P.S. Maharajganj, Distt.-Siwan.
5. Saraswati Devi D/O Late Kalicharan Singh Mauza-Bangra Dureji, Pargana Bara, P.S. Maharajganj, Distt.-Siwan.
6. Shanti Devi D/O Late Kalicharan Singh Mauza-Bangra Dureji, Pargana Bara, P.S. Maharajganj, Distt.-Siwan.
7. Ram Sundar Devi D/O Late Kalicharan Singh Mauza-Bangra Dureji, Pargana Bara, P.S. Maharajganj, Distt.-Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SHAILENDRA KUMAR SINGH, Adv.
For the Respondent/s : Mr. Ajay Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-10-2018

Petitioner before this Court is plaintiff of Partition Suit No.12 of 1985 pending in the Court of Sub Judge-IV, Siwan. He has filed this application for quashing the order dated 04.08.2009 whereby and whereunder his prayer to amend the plaint was rejected.

2. Heard learned counsel for the petitioner as well as the respondents.

3. The petitioner has filed the aforesaid suit for partition claiming 5/6th share in the land mentioned in schedule-2 of the plaint.



During the pendency of suit, the respondent no.3 brought into existence a registered deed of gift dated 31.07.1991 in his name purported to be executed by original defendant Smt. Bachi Devi. After the death of defendant (Bachi Devi) the said donee was substituted as defendant. The newly added defendant Surendra Prasad Singh filed written statement and claimed right, title and interest over the suit property on the basis of deed of gift executed by Bachi Devi. The plaintiff in the light of pleadings of intervenor-defendant filed amendment petition to amend the plaint for adding one more paragraph as para-21(ka) in the plaint with respect to the deed of gift.

4. Learned counsel for the petitioner submitted that the respondent no.3 Surendra Prasad Singh is an Advocate and he was conducting case on behalf of original defendant Smt. Bachi Devi. He has committed fraud and took thumb impression of Bachi Devi on some blank paper in course of doing pairvi in the suit on her behalf and after her death, the said Surendra Prasad Singh got a deed of gift brought into existence. The court below as per injunction order dated 28.02.1986 had restrained the defendant Bachi Devi from executing any document of transfer and so it is hit by principle of lis pendense. The defendant Bachi Devi had no intention to transfer the land in question by executing any deed of gift in favour of Surendra Prasad Singh. The petitioner wants to add one more paragraph as para 21(ka) in the plaint to this effect that the said Bachi Devi was sufficiently



aged illiterate rustic lady and she neither executed any deed of gift in favour of Surendra Prasad Singh nor she admitted the execution of said document nor affixed her thumb impression. The said Surendra Prasad Singh was in dominating possession and being a lawyer had obtained thumb impression and created deed of gift. The defendant Surendra Prasad Singh has not acquired any interest in the suit property on the basis of alleged deed of gift. The learned counsel in support of his contention has relied on ruling reported in 2002(2) PLJR SC page-187 where in the Hon'ble Apex Court at para-6 has observed as follows:-

“It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would serve advance notice to the other side as to the plea, which a party might take up. Hence we cannot envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party.”

5. The learned Apex Court in a case of Pankaja and Anr. v. Yellappa (dead) reported in (2004) 6 SCC 415 at para-14 has observed that:-

“The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”



6. In the case at hand, I find that the deed of gift propounded by defendant Surendra Prasad Singh was brought into existence during the pendency of the suit and that too after an order of injunction restraining the defendant Bachi Devi from executing any document. The document in question was registered after the death of Bachi Devi. The petitioner in view of subsequent event has filed the amendment petition only to avoid multiplicity of the proceedings and to avoid the said deed of gift by making amendment in the plaint. The said amendment do not prejudice the defendant in any way in view of the fact that the case is at initial stage of hearing.

7. In view of above fact, the impugned order is set aside and this application is allowed. The court below is at liberty to give an opportunity to the defendant to file written statement with respect to amended plaint.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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