

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1312 of 2016

=====

1. Md. Motiurr Rehman Son of Md. Tayees
2. Md. Mohim son of Md. Taslim Both are residents of Village - Manjeel Mobarak,
Post Office - Khajuri, Police Station - Kalyanpur, District - Samastipur.

.... Petitioners

Versus

1. Md. Abid
2. Sagirul
3. Alam All are sons of late Md. Rafique All are residents of Village - Manjeel
Mobarak, Post Office - Khajuri, Police Station - Kalyanpur, District Samastipur.

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Choudhary Shyam Nandan

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 25-06-2018

Heard both sides.

The petitioners have preferred this Civil Miscellaneous petition against the order dated 20.08.2016 passed in Title Suit No.47 of 2002 by learned Sub-Judge-IV, Samastipur, by which the learned Sub Judge allowed the amendment petition of the plaintiffs.

The plaintiffs filed suit for declaration of title and recovery of possession over different lands of Khata No.12 and 99 fully described in Schedule-1 of the plaint. The plaintiffs stated that their father purchased the aforesaid land in the year 1921 and since then they have been coming in peaceful possession. The defendants dispossessed the plaintiffs from the possession of the lands and



claimed that the lands also fell in their share. The defendants filed written statement and stated that Maqbul Hussain got six sons and he purchased the lands in the year 1921 in the name of Md. Rafique, one of his minor sons. Maqbul Hussain died in the year 1960 and thereafter the lands were partitioned among all the sons of Md. Maqbul Hussain. The defendants sold the land in the year 1973 and 1976 and they are in peaceful possession of the lands as the lands fell in their share. The plaintiffs filed the amendment petition that the sale deed executed on 12.01.1973 and 23.03.1976 by the defendants are not legal and be set aside.

The defendants also filed rejoinder stating therein that the prayer of the plaintiffs is barred by limitation. The plaintiffs filed the suit in the year 2002 itself and immediately thereafter the defendants filed the written statement. The defendants stated that the lands fell in their share in family partition and thereafter some of the defendants sold the land to different persons in the year 1973 and 1976 but the plaintiffs did not file any amendment petition for setting aside the sale deed although the plaintiffs were also witness to the sale deed. Therefore the prayer for setting aside the sale deed is barred by law of limitation. The learned Sub Judge, after hearing both sides allowed the amendment petition holding that the amendment is necessary in order to avoid further litigation vide order dated 20.08.2016.



Learned counsel for the petitioners submits that the amendment is barred by limitation. The suit for setting aside the sale deed should have been filed within three years from the date of execution of sale deed and on the date of execution of sale deed, the plaintiffs had got full knowledge about the execution of the sale deed. Therefore, the learned Sub Judge has illegally decided the matter, which is barred by law of limitation.

On the other hand, the learned counsel for the respondents submits that the Court should not look into the merit of the claim of the plaintiffs while deciding the amendment petition. Since the lands stand in the name of Md. Rafique, the father of the plaintiff, therefore the sale deed executed by any other defendants is not binding on the plaintiffs and the same is void and need not require any declaration.

The question arises for consideration as to whether the Sub Judge has rightly allowed the amendment petition? Rule 17 of Order 6 provides that- “the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties”. The suit was filed in the year 2002 and when the suit was at the fag end of argument/hearing, the plaintiffs brought an amendment that the sale deed executed by the



defendants in the year 1973 and 1976 be declared null and void and be set aside.

For seeking such relief, the limitation as prescribed under Section 58 of the Limitation Act is for years. The plaintiffs came to know about the execution of sale deed immediately after filing of the written statement but the plaintiffs did not file any amendment of the plaint and the Plaintiff filed amendment for setting aside the sale deed executed by the defendants only on 29.04.2016, therefore, I find that the amendment sought for by the plaintiffs is barred by law of limitation and such amendment cannot be allowed. The learned Sub Judge has not recorded any finding on the pleading that the amendment sought for is barred by limitation although the defendants have very specifically stated that the amendment sought for is barred by law of limitation and accordingly, the order dated 20.08.2016 passed in Title Suit No.47 of 2002 by learned Sub-Judge-IV, Samastipur is set aside and the Civil Miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2018
Transmission Date	NA

