

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.798 of 2018

Sri Bhuwan Singh Son of late Ram Narayan Singh Resident of Mohalla-Balbatra, P.O. Ara Chowk, P.S. Ara, Bhojpur.

... .. Plaintiff/Petitioner

Versus

1. Dasrath Singh
2. Bhagwat Singh
3. Subaidar Singh All Sons of late Tribhuwan Singh
4. Udho Singh Son of late Ram Narayan Singh, All Resident of Mohalla-Balbatra, P.O. Ara Chowk, P.S. Ara Nagar, District Bhojpur.

... .. Defendants/Respondents

Appearance :

For the Petitioner : Mr. Aditya Narayan Singh-1
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 31-08-2018

Heard both sides.

2. The petitioner has filed this civil miscellaneous petition against the order dated 05.04.2018, passed by the learned Sub-Judge, 1st, Ara, Bhojpur in Title Suit No.292 of 2007 by which the prayer for amendment of the plaint filed on behalf of the plaintiff has been rejected on the ground that the same is barred by limitation.

3. The petitioner is the plaintiff. Plaintiff filed a suit for partition of 1/3 share in the suit property on the averments that the plaintiff and defendants are descendants of one ancestor Ram Narayan Singh who got three sons Tribhuwan Singh, Sri Bhuwan Singh and Udho Singh, respondent no.6. The respondent no.6,



brother of the plaintiff, appeared and filed written statement on 21.06.1988 stating that the defendant has got no objection of 1/3 share in the joint family property to be allotted to the plaintiff but stated that the property which is in the name of Radhika Devi, the mother of the plaintiff and the property standing in the name of defendants are the self acquired property. Plaintiff is not entitled to get share in the aforesaid property. The suit was dismissed for non compliance on 03.01.2014 but the same was restored to its original file on 09.02.2017. On 10.08.2017, the petitioner-plaintiff filed petition for amendment in plaint seeking the relief that gift deed dated 21.06.1988 alleged to have been executed by Lalita Devi in favour of defendant no.6 be declared null and void and the property alleged to have been gifted have already been mentioned in the schedule of the plaint for partition. The learned Sub-Judge, 1st, Ara after hearing both sides rejected the prayer for amendment on the ground that the defendant stated the facts in his Written Statement filed on 06.06.2011 that Lalita Devi gifted some properties mentioned in the schedule of the plaint to him and, therefore, the plaintiff got knowledge on 06.06.2011 about the gift of deed executed by Lalita Devi on 21.06.1988 and, therefore, the relief sought for by way of amendment is barred by limitation as



the period of limitation for setting aside a gift deed is for three years from the date of knowledge.

4. Mr. Aditya Narayan Singh-I, the learned counsel appearing on behalf of the petitioner submits that the plaintiff filed amendment petition for amending the relief. Order VI Rule 17 empowers the court to amend the plaint if the amendment is required for determination of the dispute between the parties. The question of limitation and the merit of the amendment petition should not be looked into at the time of hearing on the amendment petition. Learned counsel for the petitioner has heavily placed his reliance on the judgment of *Mohinder Kumar Mehra vs. Roop Rani Mehra*, reported in *2018 (1) PLJR 91 (SC)* in which it has been held that limitation was only three years and not 12 years. It was too early to consider the point of limitation at the time of hearing on the amendment petition.

5. On the other hand, the learned counsel for the respondents submits that on the same facts the Supreme Court in the case of *Radhika Devi v. Bajrangi Singh and others.*, reported in *AIR 1996 SC 2358* held that the defendant in Written Statement especially pleaded about gift deed made in his favour regarding property in dispute and thereafter plaintiff filed amendment of plaint seeking declaration that gift deed was obtained illegally,



fraudulently and filed amendment petition beyond period of limitation for setting aside such gift deed it has been held that the defendant acquired right by bar of limitation, amendment if allowed would defeat the right accrued in favour of defendant and dismissed the amendment petition. From the perusal of records and the impugned order, it appears that the plaintiff filed the Title Suit No.292 of 2007 seeking partition of 1/3 share in the entire property mentioned in the schedule of the plaint. The defendant no.6 filed Written Statement on 06.06.2011 stating therein that Lalita Devi executed deed of gift in his favour on 21.06.1988. On 06.06.2011, the plaintiff came to know about the deed of gift and the plaintiff filed the amendment petition seeking relief for setting aside the gift deed executed by Lalita Devi in favour of defendant no.6 on 10.08.2017. It is admitted that the period for limitation provided for setting aside the registered sale deed is for three years under Article 59 of the Limitation Act from the date of knowledge. The plaintiff came to know about the deed of gift on 06.06.2011 but on the reasons best known to him he did not file amendment petition for about six years, therefore, I find that the learned Sub-Judge has rightly held that the amendment sought for by the plaintiff is barred by limitation. Similar view has been taken in the Single Bench judgment of this Court in the case of *Rahman Mian v.*



Reyazul Ansari, reported in 2005 (3) PLJR 455 and *Radhika Devi* (supra). It appears from the perusal of the judgment of the Hon'ble Supreme Court in the case of Mohinder Kumar Mehra (supra) that there was dispute with regard to application of different provisions of the Limitation Act. The defendants claimed that the period of limitation for seeking relief is for three years but according to the plaintiff the limitation of seeking relief with regard to the property alienated is 12 years under Article 108 of the Limitation Act and this dispute cannot be resolved without adducing evidence and, therefore, the Hon'ble Supreme Court held on the facts that the amendment should be allowed and the question of limitation shall be decided after adducing evidence of the parties but in the present case the facts are admitted that the defendant no.6 filed Written Statement on 06.06.2011 disclosing the facts that Lalita Devi executed gift deed in favour of him on 21.06.1988. The plaintiff came to know about the gift deed on 06.06.2011 itself and the limitation for setting aside such gift deed is for three years from the date of limitation which starts running from 06.06.2011 but the plaintiff filed the amendment petition seeking relief for setting aside the gift deed on 10.08.2017 which is beyond the period of limitation and thus I find that the learned court below has rightly



dismissed the amendment petition holding that the relief sought is barred by law of limitation.

6. Having considered the facts aforesaid, I do not find any merit in this civil miscellaneous petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2018
Transmission Date	NA

