

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14560 of 2014

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1. Chandeshwar Prasad Singh S/o Bajrangi Singh
 2. Pratibha Datta W/o Chandeshwar Prasad Singh Both Resident of Village Koari Buzurg, P.S. Hajipur, District Vaishali.

.... Petitioner/s

Versus

1. Ram Ekbal Singh S/o Ram Milan Singh Resident of Village Koari Buzurg, P.S. Hajipur, District Vaishali.
2. Dharendra Pandey S/o Jai Ram Pandey
3. Ram Kuer Devi
4. Nanda Devi Both D/o Late Jai Ram Pandey All Resident of Village Jalalpur, P.S. Sarai, District Vaishali.
5. Bholu Prasad Singh S/o Late Ram Chandra Singh Resident of Village Gomti, P.S. Rajapakar, District Vaishali.
6. Shambhu Prasad Singh
7. Sudama Prasad Singh
8. Sudhir Prasad Singh
9. Sanjay Kumar Singh All S/o Madan Mohan Prasad All Resident of Village Duniya, P.S. Saraiya, District Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Natraj Verma, Advocate
For the Respondent no.1	:	Mr. Dharmendra Choubey, Advocate
		Mr. Vijay Kumar @ Vijay Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 20-08-2018

This application has been filed for quashing the order dated 11.06.2014 passed by Additional District Judge-Ist, Vaishali at Hajipur in Title Appeal No.20 of 2007. The learned Ist appellant court as per impugned order allowed the petition filed by the respondents (plaintiff) whereunder the plaint was amended.

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



3. The respondents filed Title Suit No.211 of 1993 for declaration that the two registered sale deeds dated 07.09.1993 executed by the defendant 2nd party in favour of defendant Ist party with respect to suit land are illegal inoperative, void and not binding of the plaintiffs. The suit was dismissed on contest. The court below held that the suit was hit by Section 34 of the Specific Relief Act. It was held that the suit is not maintainable as the plaintiffs had not sought relief for declaration of his title. The respondents filed a Title Appeal No.20 of 2007 and during the pendency of said appeal, they filed amendment petition which was allowed. The respondents have filed this writ application for quashing the said order.

4. On perusal of impugned order as well as pleadings of both the parties, I find that the respondents/plaintiffs claim title on the basis of registered deed of gift dated 24.01.1951. The plaintiffs have pleaded as regards deed of gift at para-8 of the plaint. It has been asserted that after execution of deed of gift the donor Banaras Singh delivered possession of gifted property to Sonfi Singh who was ancestor of the respondents. The defendants filed written statement and denied the case of plaintiff. The learned court below has discussed the said registered deed of gift at para-9 of the judgment and held that the deeds of gift were not legal and it never acted upon. The appellants filed amendment petition and it was allowed. By the said



amendment, the appellant has added one more relief with respect to declaration of his title on the basis of registered deed of gift executed in the year 1951 with respect to land mentioned in schedule-2 of the plaint. The third amendment is with respect to court fee matter. The appellants have not made any amendment in its pleadings. The deed of gift in question is the basis of title of the appellants and both the parties are aware of the said document. The only objection of petitioners is that the amendment has been filed at belated stage and the nature of the suit has also changed. The amendment in question appears formal in nature in view of the fact that one more relief as regards declaration of title of the appellants has been added. In the case of ***Ragu Thilak D. John v. S.Rayappan*** reported in (2001) 2 SCC 472, The Hon'ble Apex Court has held as follows:-

“The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for.”

5. The Hon'ble Apex Court in the case of ***A.K.Gupta and Sons Ltd. V. Damodar Valley Corporation***, AIR 1967 SC 96 para-7 has observed as follows:-

“The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal*. But it is also well recognized that



where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See *Charan Das v. Amir Khan and L.J. Leach and Co. Ltd. V. Jardine Skinner and Co.*”

6. In this regard, I would like to cite the observation of Hon’ble Apex Court in a case of *Ganesh Trading Co. v. Moji Ram* reported in *AIR 1978 SC* page **484** under para-2, wherein the Hon’ble Apex Court has held that procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.”

7. In the case in hand, I find that the said amendment is based on cause of action which arose after execution of sale deed in favour of defendant Ist party. The plaintiffs have filed the suit on the basis of their registered deed of gift. The cause of action against the petitioners is same. The court below in order to avoid the multiplicity of the suit has amended the plaint in view of their earlier pleadings and so the petitioners are not prejudiced by the said amendment.

8. In view of above facts, I find that the court has not



exceeded its jurisdiction in allowing the amendment. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	N/A
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