

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.760 of 2016

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1. Ram Jatan Sah son of Late Mauje Lal Sah Resident of Village- Vishambharpur Ataudha, Tola Chainpur, P.S.- Musrigharari, Dist- Samastipur.

.... Appellant/s

Versus

1. Shambhu Sah son of Late Mauje Lal Sah
2. Sanjeev Kumar Sah son of Shambhu Sah
3. Deepak Kumar son of Shambhu Sah All resident of Village- Lat Basepura, PO- Lat Basepura, PS- Musrigharari, Dist- Samastipur.
4. Kumari Sweeti Gupta wife of Sandeep Kumar Sah resident of Village- Lat Basepura, PO- Lat Basepura, PS- Musrigharari, Dist- Samastipur.
5. Laxmi Sah son of Late Mauje Lal Sah
6. Pinku Sah
7. Rinku Sah
8. Pappu Sah All are sons of Laxmi Sah, and All resident of Village- Lat Basepura, PO- Lat Basepura, PS- Musrigharari, Dist- Samastipur.
9. Jitendra Kumar Sah
10. Dharmendra Kumar Sah Both sons of Ram Jatan Sah Both Resident of Village- Vishambharpur Ataudha, Tola Chainpur, P.S.- Musrigharari, Dist- Samastipur.
11. Ram Bilash Sah son of Late Mauje Lal Sah
12. Ram Babu Sah Son of Ram Bilash Sah
13. Mohan Sah son of Ram Bilash Sah All resident of Village- Bharpur Autaudha, Tola Chainpur, P.S.- Musrigharari, Dist- Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kulanand Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

5 10-09-2018 Heard Mr. Alok Kumar Choudhary, learned counsel for the petitioner and Smt. Madhuri Kumari learned counsel for the respondent Nos.1 and 2.

The plaintiff filed the suit for declaration of the sale deed dated 20.03.2013 executed by Shambhu Sah, defendant No.1 in



favour of Kumari Sweeti Gupta with regard to the land mentioned in schedule of the plaint as illegal, void, without consideration and collusive. During the pendency of the suit, the petitioner filed amendment petition on 09.01.2015 for amendment of the plaint. The plaintiff stated in the amendment petition that he came to know during the pendency of the suit that defendant No.1 also fraudulently executed a sale deed in favour of his son, Deepak Kumar, defendant No.3 and Lalita Devi and accordingly, plaintiff stated that Lalita Devi be made party and the amendment of the plaint be allowed with addition of prayer to set aside the sale deed executed by defendant No.1 in favour of Deepak Kumar and Lalita Devi as illegal, without consideration and the defendant No.1 has got no right to sell the property but the said amendment petition has been dismissed by the learned Sub Judge III, Samastipur.

Mr. Alok Kumar Choudhary, learned counsel for the petitioner submits that in the suit, the issues are yet to be settled. The hearing has not been started. The plaintiff filed the amendment petition seeking amendment in the plaint with regard to the facts which the plaintiff came during the pendency of the suit that Shambhu Sah, defendant No.1 also executed collusive sale deed with regard to certain lands in favour of his son and Lalita Devi and accordingly, sought amendment of relief seeking



setting aside the sale deed as illegal, without consideration and collusive. Learned Sub Judge has committed jurisdictional error. Learned counsel for the petitioner submitted that the earlier petition of the plaintiff for amendment filed on 09.01.2015 but the same was dismissed as not pressed. The plaintiff again filed the petition on 07.12.2015 but the learned Sub Judge without adverting to the facts whether the amendment is required for determination of the disputes between the parties rejected the amendment petition of the plaintiff without assigning any reason much less the cogent reason.

On perusal of the amendment petition, Annexure 2, I find that the plaintiff has stated that during the pendency of the suit, he came to know about the execution of the sale deed by Shambhu Sah, defendant No.1 in favour of Deepak Kumar, son of defendant No.1 and Shambhu Sah also executed a sale deed in favour of Lalita Devi with regard to the land which was already gifted in the year 2002. Accordingly, the plaintiff sought amendment of the plaint and the prayer portion. The suit is at the very initial stage, even the issues have not yet been settled. Therefore, I find that the learned Sub Judge has committed jurisdictional error in dismissing the amendment petition of the plaintiff. Accordingly, the order dated 25.04.2016 passed in Title Suit No.175 of 2013 is set aside.



The amendment petition filed by the plaintiff is allowed. It goes without saying that the defendants have got every right to file additional written statement.

Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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