

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1328 of 2016**

1. Shekh Thithar
2. Shekh Molim
3. Shekh Akhtar
4. Shekh Mususa, All are sons of Late Shekh Yusuf
5. Shekh Jeebachh, Son of Late Shekh Ashik
All residents of Village & P.O. Pataniya, P.S. Biraul, District Darbhanga.

... .. Defendants/Petitioners

Versus

1. Bahadur Khatbey
2. Ganga Khatbey
3. Tilak Khatbey
4. Narayan Khatbey, All are sons of Late Bharos Khatbey
5. Yoge Khatbey, Son of Late Adhin Khatbey & grandson of Darsan Khatbey
6. Most. Pariya, Wife of Chalitar Khatbey, Daughter of Late Adhin Khatbey
All are residents of Village Rampur, P.S. Biraul, Sub-division Biraul, District Darbhanga

... .. Plaintiffs-Respondents 1st Set

7. Shekh Mukhtar, Son of Late Sk. Yusuf
8. Shekh Md. Salim
9. Shekh Amim
10. Shekh Samim
11. Shekh Ajeem, All are sons of Late Shekh Masuf
12. Shekh Abul, Son of Late Sk. Yusuf
All are residents of Village + P.O. Pataniya, P.S. Biraul, Sub-division Biraul, District Darbhanga

... .. Defendants/Respondents 2nd Set

Appearance :

For the Petitioners	:	Mr. Ganesh Chandra Thakur, Advocate Mr. Dharmendra Kumar Sinha, Advocate
For the Respondents	:	Mr. Sunil Kumar Karn, Advocate

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT**

Date : 14-09-2018

Heard both sides.

2. The petitioners filed this civil miscellaneous petition against the order dated 09.09.2016, passed by learned Munsif, 1st, Biraul, Darbhanga in Title Suit No.33 of 1992 by which the amendment petition of the plaintiffs-respondents for amendment of



the plaint has been allowed. The plaintiffs filed the suit for declaration of title and for permanent injunction restraining the defendants from interfering into the peaceful possession of the petitioners over the disputed land. The suit was posted for argument but the plaintiffs filed a petition for amendment of plaint and adding prayer that the sale deed executed in favour of the defendants on 08.07.1910 and 13.05.1943 be declared forged, fabricated, null and void, collusive and without consideration. The defendants filed rejoinder stating that defendants filed WS in the year 1997 but the petitioners did not seek any relief for setting aside the sale deed. The limitation for setting aside the sale deed is for three years under Articles 28/59 of the Limitation Act from the date of knowledge of the fact of registration but the plaintiffs kept mum and filed this amendment petition only on 29.08.2016, therefore, the relief sought for by the petitioners is barred by limitation but the learned Munsif without giving any finding on the points raised by the defendants allowed the amendment petition.

3. The learned counsel for the petitioners submits that the order is cryptic and does not disclose any reason for allowing the amendment petition. The petitioners have taken a specific plea that the amendment sought for and seeking the relief is barred by law of limitation and, therefore, by allowing amendment petition, the



learned court has taken away the accrued right from the defendants and thereby committed jurisdictional error.

4. Contending the submissions of the learned counsel for the defendants-petitioners, learned counsel for the respondents submits that the plaintiffs stated in the plaint that any sale deeds with regard to the land is forged, fabricated not binding on the plaintiffs and plaintiffs by way of amendment only sought relief for setting aside the sale deed dated 19.10.1942.

5. On perusal of the order and considering the submissions, I find that the learned Munsif has not at all considered the objections of the defendants and allowed the amendment petition without assigning any reasons, therefore, I find that the order is not sustainable. Accordingly, the order dated 09.09.2016, passed in Title Suit No.33 of 1992 is set aside. The matter is remitted to the court of learned Munsif, 1st, Biraul to consider the amendment petition of the plaintiffs and the rejoinder of the defendants and pass reasoned order in accordance with law.

6. The civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2018
Transmission Date	NA

