

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.107 of 2016

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Jitendra Mohan Singh son of Sri Brijnandan Singh resident of village - Gere, P.S. - Gaya Mufassil, District - Gaya, presently B.N. Singh Colony, Gere Niwas, near Railway Line, P.O. - Buniyadganj, P.S. - Mufassil, District - Gaya.

... .. Petitioner/s

Versus

1. Rajendra Prasad son of Late Ram Kishun Ram resident of mohalla - Tekari Road, Bata More, P.S. - Kotwali Gaya, District - Gaya.
2. Basanti Devi Wife of Late Ranjeet Singh
3. Komal Kumari D/o Late Ranjeet Singh
4. Chandan Kumar S/o Late Ranjeet Singh, Both sons and daughter of Ranjeet Singh, Minors under the guardianship of their mother Smt. Basanti Devi, natural guardian and next friend
5. Om Prakash Singh son of Late Raj Kumar Singh
6. Sanjeev Singh son of Late Raj Kumar Singh All residents of village - Ghirisindih, P.S. - Tekari, District - Gaya, presently resident of village - Old BDO Office, Dhori, Bermo, P.S. Bermo, District - Bokaro (Jharkhand).
7. Ramadhar Singh son of Sri Janardan Singh resident of village - Chirila, Tetaria, P.S. - Gaya Mufassil, District - Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 30-11-2018

Heard Mr. S.S.Dvivedi, learned senior counsel for the petitioner and Mr. Sukumar Sinha, learned senior counsel for the respondent No.1.

The petitioner filed this civil miscellaneous petition against the order dated 16.04.2016 passed by 8th Subordinate Judge, Gaya in Title Suit No.3 of 2015/154 of 2014 whereby the



learned court below rejected the additional written statement filed on behalf of the petitioner.

The petitioner is defendant No.5 in the suit. The plaintiff-respondent No.1 filed Title Suit No.154 of 2014 seeking a decree for specific performance of contract with a direction to the defendant Nos.3 and 5 to sell and reconvey the properties described in Schedule II of the plaint on receipt of balance consideration amount. The case of the plaintiff is that Sona Devi, wife of Late Rajkumar Singh purchased 2.26 acres of land through a registered sale deed on 19.11.1958. Sona Devi died leaving behind three sons namely, Om Prakash Singh, Ranjeet Singh(now dead) and Sanjeet Singh who got their names mutated vide Mutation Case No.181 of 2005-06. Defendant Nos.1 and 2 authorised their brother, defendant No.3, Sanjeet Singh by registered power of attorney to sell or deal with the property. Accordingly, defendant No.3 entered into a contract with the plaintiff on consideration of Rs.50 lacs. Rs.15 lacs was paid and the remaining Rs.35 lacs was to be paid at the time of execution of the sale deed but later on, defendant No.3 on his behalf and on behalf of his two brothers sold 1.36 acres of land to defendant No.5-petitioner. During the pendency of the suit after filing of written statement on the prayer of the



plaintiff, the plaint was amended with liberty to the defendants to file additional written statement. Petitioner-defendant No.5 also filed additional written statement besides giving reply to the amendment made in the plaint stated certain new facts which came to the knowledge of the defendant that actually the property belonged to the father of Sona Devi who was in trouble due to various outstanding dues and there was threat that the property of the father of Sona Devi was put on auction in discharge of debts. The father of Sona Devi executed sale deed in favour of his daughter but the sale deed was sham transaction. The petitioner also purchased the land from the brothers of Sona Devi after the death of her father. The petitioner filed petition for acceptance of the additional written statement but the plaintiff filed rejoinder and the court by the impugned order rejected the additional written statement filed by the petitioner-defendant No.5 on the ground that the pleading in additional written statement, there is a complete withdrawal of the admission made in the written statement and the defendant No.5 seeks to set up a new case which certainly would prejudice the plaintiff as the defendant No.5 did not plead in the written statement about the sham transaction made by the father of Sona Devi in favour of Sona Devi.



Mr. S.S.Dvivedi, learned senior counsel for the petitioner submits that the court below has rightly held that amendments of the written statement are liberally allowed than the amendment of the plaint and the defendant is at liberty to take the alternate plea or the inconsistent plea but the learned court below has under wrong notion held that defendant cannot set up a completely new case resulting in a serious injustice to the other side and admission made cannot be withdrawn by amendment or subsequent pleadings. It is submitted that defendant No.5 did not withdraw any statement made in the written statement and, therefore, the finding of the learned Sub Judge that the defendant withdrew the admission made in the written statement is absolutely illegal and beyond comprehension since no word of the written statement is sought to be deleted. Mere introduction of certain new facts that the sale deed executed by the father of Sona Devi in favour of Sona Devi was a sham transaction and made only with a view to save the property of the father of Sona Devi from being sold in auction at the instance of his creditors and subsequently, the defendant also purchased the land from the brothers of Sona Devi. This plea may be termed as inconsistent to the plea earlier taken in the written statement but the same cannot be termed as



amounting to withdrawal of any admission and thus, the order suffers from jurisdictional error as well as illegality.

Mr. Sukumar Sinha, learned senior counsel for the respondent No.1 made all attempts to persuade me that on account of introduction of new facts in the additional written statement, the statements made by the defendant that Sona Devi bonafidely purchased the land from her father in the year 1958 by registered deed amounts to withdrawal of such admission but when the learned counsel for the respondent was confronted with the fact that no part of written statement is deleted by way of filing additional written statement, how the introduction of new facts amounts to withdrawal of admission made in the written statement, Mr. Sinha very fairly submitted that the introduction of new facts in additional written statement may introduce inconsistent plea but the same cannot be termed as withdrawal of any admission made in the written statement.

Having considered the facts aforesaid, I find that the learned Sub Judge has committed jurisdictional error as well as the illegality in rejecting the additional written statement of the defendant No.5 holding that the introduction of new facts amounts to withdrawal of admission and thus the order dated 16.04.2016 is illegal and not sustainable. Resultantly, the order



dated 16.04.2016 passed in Title Suit No.3 of 2015/154 of 2014
is set aside and the additional written statement is accepted.
Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.12.2018
Transmission Date	

