

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16824 of 2010

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1. Bimlesh Chandra Rai S/o Sri Jhari Lal Rai, R/o Village. & P.O.- Rasulpur Fatah, P.S.- Goraul, Distt.- Vaishali
 2. Satish Chandra Rai S/o Sri Jhari Lal Rai, R/o Village. & P.O.- Rasulpur Fatah, P.S.- Goraul, Distt.- Vaishali

.... Petitioner/s

Versus

1. Smt. Chinta Devi W/o Sri Kailash Rai, R/o Village. & P.O.- Salempur Dumariya, P.S.- Goraul, Distt.- Vaishali
2. Smt. Lalo Devi W/o Late Khakhan Rai, R/o Village.- Baji Bujurg, P.O.- Dholi, P.S.- Dholi, Distt.- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. M. N. Parbat, Sr. Adv.
Mr. Praveen Prabhakar, Adv.
Mr. Abhay Kumar Singh, Adv.
For the Respondent/s : Mr. Bishwajeet Pandey

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-10-2018

Petitioners before this Court are plaintiffs of Title Suit No.331 of 2002 pending in the court of Sub-Judge-V, Hajipur at Vaishali. They have filed this writ application for setting the order dated 13.08.2010 whereby and whereunder their amendment petition to amend the plaint was rejected.

2. Heard learned counsel for the petitioners and perused the record.

3. It appears that the petitioners filed the aforesaid suit for declaration of their title over the land mentioned in scheduled-I of the plaint. The defendants appeared and filed written statement wherein



they asserted their right title over the land in question on the basis of registered deed of gift dated 15.06.1992 executed by Machiya Devi in favour of defendant no. 1-Minta Devi. The plaintiffs having come to know about the said deed of gift, filed an amendment petition for adding some fact in para 8 of the plaint with respect to said deed of gift. The learned court below considering the delay of eight years in filing amendment petition, has rejected the petition.

4. The learned counsel for the petitioners submitted that the copy of written statement remained in possession of conducting lawyer and it was not made available to the defendants. The defendants could learn about the said deed of gift only after framing of issues. The said amendment neither changes the nature of the suit nor prejudices the defendants in any way, as the trial of suit has not commenced.

5. On perusal of impugned order it appears that the court below has rejected the petition as the same was filed after six years of filing of written statement in which the defendants had disclosed about the deed of gift in his favour. The trial of this case is at initial stage and the case is pending for evidence of plaintiffs. The amendment if allowed it will not cause any prejudice to the defendants and all the issues in the suit will be fully and finally adjudicated.



6. In view of above facts, the impugned order refusing to amend the plaint is set aside and this writ application is allowed, subject to payment of cost of Rs.3,000/- by the petitioners to the contesting defendants. The court below however is directed to give an opportunity to the defendants to file additional written statement with respect to amended plaint. The matter of limitation will remain open for adjudication by the court below as regards deed of gift.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05/10/2018
Transmission Date	N/A

