

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.974 of 2016

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1. Narayan Prasad Son of Late Ram Chandra Prasad, resident of Mohalla Lahbazar,
P.O. Chhapra, P.S. Chhapra Nagar, District- Saran.

.... Petitioner/s

Versus

1. Ved Prakash Son of late Hari Prasad
2. Jagadish Prasad Kamla Son of late Kamla Prasad.
3. Manoj Kumar Gupta
4. Ajay Kumar Gupta
5. Ashok Kumar Gupta all sons of Late Kedarnath Gupta.
6. Chanda Devi Wife of Late Kishore Prasad
7. Sima Kumari
8. Riya Kumari
9. Rimpi Kumari
10. Rakesh Kumar
11. Nandan Raja all sons and daughters of Late Kishore Prasad All residents of
Mohalla Kahimchak Azad Road, P.O. Chhapra, P.S. Chhapra Nagar, District-
Saran.
12. Sanjay Kumar
13. Guddu Kumar
14. Ravi Kumar
15. Raj Kumar all sons of Late Kanhaiya Prasad.
16. Ramjee Prasad
17. Tarkeshwar Prasad Both sons of Late Ram Chandra Prasad.
18. Om Prakash Prasad
19. Krishna Murari Prasad both sons of Late Rameshwar Prasad.
20. Jai Prakash Prasad
21. Satya Prakash Prasad
22. Shambhu Prasad
23. Anil Gupta all sons of late Ramanand Prasad.
24. Gita Devi Wife of Late Kanhaiya Prasad.
25. Anjana Devi D/o Late Kanhaiya Prasad.
26. Ram Prasad @ Ram Babu Prasad Son of Late Audhya Prasad All residents of
Mohalla Lahbazar, P.O. Chhapra, P.S. Chhapra Nagar, District- Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma

For the Respondent/s : Mr. Vindhyachal Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 26-06-2018

Heard Mr. Jitendra Kishore Verma, learned counsel
appearing on behalf of the petitioner and Mr. Vindhyachal Singh,



learned counsel appearing on behalf of respondents.

The petitioner has filed this Civil Misc. Petition against the order dated 28.04.2016 passed by the learned Sub-Judge Ist, Saran, Chapra in Partition Suit No. 593 of 2012, by which the petition for amendment of the plaint, filed by the plaintiff, has been allowed. Plaintiffs are respondents.

Learned counsel for the petitioner submits that the plaintiff filed the suit for partition of property mentioned in Schedule VI of the plaint. At the same time, the plaintiff admitted that the property mentioned in Schedule I to V of the plaint were partitioned among their ancestors and the properties mentioned in Schedule-VI of the plaint remained joint. The defendants filed W.S. stating the facts that after partition by registered deed of partition among the ancestors of the plaintiffs and defendant, the respective co-sharers dealt with the property by way of registered deed of gift, will and sale executed in the years 1936, 1953, 1960 and 1968. Thereafter, the plaintiff brought an amendment petition to insert para 15(K) after para 15. The plaintiff stated that the gift deed dated 14.10.1936 executed by Babulal Sah in favour of Ram Chandra Prasad and the gift deed dated 02.10.1936 executed by Parwati Kuwar in favour of Ram Chandra Prasad and the will dated 05.04.1968 executed by Parwati Devi are forged, fabricated and never acted upon and those documents were created with a view



to grab the land and shares of the plaintiffs. This amendment is allowed by a cryptic order without assigning any reason holding that the amendment is of formal nature whereas the amendment sought for would change the entire nature of the suit.

Mr. Jitendra Kishore Verma, learned counsel for the petitioner further submits that it is admitted fact that there was partition among ancestors of the plaintiffs and defendant, including the vendors of the defendants by a registered deed of partition. Thereafter, Babulal Sah, Parwati Kuwar and others dealt with the properties falling in their exclusive share and executed gift deed, will and sale deed in favour of different persons. It is not a case of the plaintiffs that ancestors of the plaintiffs re-joined with Babulal Sah and others, but in stead of seeking relief for setting aside those documents, which cannot be sought for as the same is barred by limitation, the plaintiff wanted declaration that the aforesaid deeds are forged and fabricated and the learned Sub- Judge illegally allowed the amendment petition.

Mr. Vindhyachal Singh, learned counsel appearing for the respondents, however, made all efforts to support the order of the learned Sub-Judge, but at the same time, admitted that the order of the learned Sub-Judge is cryptic and without any reason.

Having considered the submissions of both sides and on



perusal of the order dated 28.04.2016, I find that the plaintiff sought amendment of the plaint and wanted to insert para 15(K) after para 15 that the deeds executed by Babulal Sah and others, mentioned therein, are forged and fabricated and by way of such amendment, the plaintiffs wanted to get partition of the aforesaid property also by way of inheritance, as the person who executed the deed of gift and will died issueless, which would certainly change the nature of the suit but the learned Sub-Judge without giving any finding and without considering the objections of the defendants allowed the amendment petition. Therefore, I find that the learned Sub-Judge has committed jurisdictional error and passed order without any reasons.

Considering the facts aforesaid, the order dated 28.04.2016 is set aside. Accordingly, the present Civil Misc. Petition is allowed and the matter is remitted back to the court of the learned Sub-Judge 1st, Saran at Chapra to pass order afresh on the amendment petition of the plaintiffs after hearing both sides.

(Prabhat Kumar Jha, J.)

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AFR/NAFR	
CAV DATE	N.A.
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