

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1474 of 2016**

1. Nirmla Devi, Wife of Late Umeshwar Chaubey
2. Rakesh Kumar Chaubey, Son of Late Umeshwar Chaubey.
3. Asish Kumar Chaubey, Son of Late Umeshwar Chaubey.
4. Babita Devi
5. Preeta Devi, Both daughters of Late Umeshwar Chaubey. All residents of Village- Lakhaura, Police Station- Shikarpur, District- West Champaran.

... .. Appellant/s

Versus

1. Bibi Anjum Nessa, Wife of Abdul Hamid
2. Md. Kalim, Son of Late Abdul Hamid
3. Rehana Khatoon, daughter of Late Abdul Hamid All residents of Sreepur Bhataha, Police Station- Sugauli, District- East Champaran, at present resident of Village- Pipara, Deulia, Police Station- Shikarpur, /District- West Champaran.
4. Shekh Ahmad, Son of Shekh Hakim, resident of Village- Pipara Tola Deulia, Post Office/ Police Station- Shikarpur, District- West Champaran.
5. Sri Krishna Prasad Chaubey @ Bhagwanjee Chaubey, Son of Late Chandra Shekhar Chaubey @ Daroga Chaubey, resident of Village- Lakhaura, Police Station- Chanpatia, District- West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shiv Kumar Dwivedy
For the Respondents	:	Mr. Akhileshwar Kr. Srivastava

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 30-11-2018 Heard both sides.

The petitioners have filed this Civil Misc. petition against the order dated 10.05.2016 passed by learned Munsif, Narkatiaganj, West Champaran in Title Suit No. 136 of 2002 by which three petitions filed by the plaintiffs on 25.02.2016, i.e. one petition under Order VI Rule 17 of the Code of Civil Procedure, second petition for leave to file the documents and prayed to mark them exhibits and third petition for rejection of



Commissioner's report dated 09.06.2005 have been dismissed.

The petitioners are the plaintiffs. The petitioners filed Title Suit No.136 of 2002 against the defendants for declaration of their right and title over the land mentioned in schedule-3 of the plaint as well for recovery of possession of the suit land through the process of the court. The petitioners further prayed to declare the alleged sale deed dated 19.05.1998 executed by defendant No.2 in favour of defendant No.1 as illegal void ab initio and for grant of injunction restraining the defendant No.1 from making construction over the disputed land. During the course of argument the plaintiffs found some typographical error and also found that additional relief be added in the plaint and for seeking permission to produce certified copy of registered sale deed, which is under challenge in the suit, but the amendment petition as well as prayer for producing registered sale deed under challenge have been rejected by the impugned order.

The learned counsel for the petitioners submits the amendment sought for is formal in nature. It is submitted that the relief sought to be added is consequential in view of the fact that the plaintiffs have already sought relief for declaration of sale deed dated 19.05.1998 executed by defendant No.2 in



favour of defendant No.1 as illegal, void ab initio and, therefore, Jamabandi No. 274 created on the basis of such sale deed be also declared illegal, null and void. The photo copy of the aforesaid sale deed is already on record and the plaintiffs wanted to bring certified copy of the sale deed on record but the learned Munsif rejected the petitions of the petitioners on the ground that amendment petition is filed after much delay and the documents should have been filed under Order 13 Rule 1 of the Code of Civil Procedure before settlement of the issues.

The learned counsel for the respondents, however, tried to justify the order and submitted that the order does not require any interference.

Having considered the submission of both sides, it is evident that the plaintiffs filed the suit for declaration of title and for recovery of possession as well as for declaration of sale deed 19.05.1998 executed by defendant No.2 in favour of defendant No.1 as illegal void ab initio and for grant of injunction restraining the defendants from interfering into peaceful possession of the plaintiffs. The plaintiffs filed amendment petition and sought correction of some clerical error as well as for addition of relief for declaration of Jamabandi No. 274 as illegal as the same was created in favour of defendant



No.1 on the basis of sale deed executed by defendant No.2 in favour of defendant No.1. There appears that the amendment is formal and corrective in nature and the addition of relief is consequential as on the basis of sale deed executed by defendant No. 2 in favour of defendant No.1, which is sought to be declared as illegal and void ab initio, the defendant No.1 got Jamabandi No.274 opened in his name. It further appears that the sale deed dated 19.05.1998 executed by defendant No.2 in favour of defendant No.1 is sought to be illegal void ab initio and plaintiffs wanted to produce certified copy of the aforesaid sale deed, photo copy of which is already on record, and in no way by producing certified copy of sale deed and by adding additional relief the defendants would be prejudiced or any harm would be caused to the defendants. Therefore, I find that the learned Munsif has committed jurisdictional error in rejecting the prayer of amendment and prayer for bringing on record certified copy of sale deed dated 19.05.1998, which is under challenge. Accordingly, the order dated 10.05.2016 passed by learned Munsif, Narkatiaganj, West Champaran in Title Suit No. 136 of 2002 is set aside in part so far it relates to amendment of plaint and for production of certified copy of sale deed dated 19.05.1998. The amendment petition is allowed.



Resultantly, this Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

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