

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.296 of 2018

1. Ramdeo Prasad Singh Son of Gopal Prasad
2. Ashok Singh Son of Ramdeo Prasad Singh
3. Usha Devi Wife of late Jaleshwar Singh
4. Tarkeshwar Kumar Son of late Jaleshwar Singh All of Village- Khem Matihaniya, P.S. Bishambharpur, District- Gopalganj.
5. Most. Fulpati Kuwar Wife of Lal Bahadur Singh
6. Ram Sagar Singh
7. Rameshwar Singh
8. Rajesh Singh
9. Rakesh Singh
10. Dharmendra Singh
11. Kalawati Devi
12. Kamlauti Devi All Sons and Daughters of late Lal Bahadur Singh All of Village- Awadh Nagar, Bishunpur, Police Station- Jadopur, District- Gopalganj.
13. Daroga Singh Son of Gopal Singh Resident of Village- Khem Matihania, Police Station- Bishambharpur, District- Gopalganj.

... .. Petitioner/s

Versus

1. Satyendra Pati Tiwari Son of Sardapati Tiwari Resident of Tiwari Belwan, Police Station- Kateya, District- Gopalganj.
2. Gita Devi wife of late Awadh Kishore Tiwari
3. Priyanka Kumari Daughter of late Awadh Kishore Tiwari
4. Deji Kumari
5. Vinit Kumar Tiwari Both Minor daughter and son of late Awadh Kishore Tiwari under the guardianship of their mother Geeta Devi.
All 2 to 5 resident of Village- Ahiyapur, Police Station- Gopalpur, District- Gopalganj, at Present resident of Banjari, P.O. Gopalganj, P.S. and District- Gopalganj.
6. Sriram Singh Son of Suresh Singh
7. Ravindra Singh Son of Harilal Singh Both Resident of Village- Mehdiya, P.S. and District- Gopalganj , at Present of Badyari, P.O. Gopalganj, P.S. and District- Gopalganj.
8. Dhanraj Prasad Son of Ramjit Prasad
9. Sushil Kumar Yadav Son of Sheopujan Yadav Both Resident of Village- Khem Matihania, Police Station- Bishambharpur, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Raghav Prasad
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 26-11-2018

Heard Mr. Raghav Prasad, learned counsel appearing



on behalf of the petitioners and Mr. Harendra Prasad, learned counsel appearing on behalf of respondent Nos.8 and 9, newly added defendant in the suit.

The petitioners are the plaintiffs. Petitioners filed suit for declaration of title. During the pendency of the suit, some of the defendants sold the land to defendant Nos.5 and 6-respondent Nos.8 and 9 herein who were added as defendants under Order I Rule 10 (2) of the Code of Civil Procedure and filed written statement along with the counter claim in the year 2006 itself. When the argument of the defendants was concluded and the suit was posted for argument of the plaintiff, plaintiff filed the petition on 05.12.2017 under Order VI Rule 17 for amendment of the plaint. The plaintiff wanted to insert in the plaint that the defendant Nos.5 and 6 illegally and fraudulently executed two sale deeds with regard to 2 kathas of land on 24.10.2003 and prayed that aforesaid two sale deeds be declared void ab initio document. Learned Sub Judge X after hearing both sides dismissed the petition of the petitioners on 03.1.2018 holding that the sale deeds were executed during the pendency of the suit and the same is hit by the principle of lis pendens, therefore, there is no requirement of amendment of the plaint and the plaintiff wanted to delay the disposal of the suit by filing



amendment petition at a very belated stage that too at the stage of argument.

Mr. Raghav Prasad, learned counsel for the petitioners submits that the amendment is of formal in nature and declaration of addition of the prayer portion and the facts with regard to the execution of the sale deeds is very much essential for the just decision of the case but I find no substance in the submission of the learned counsel for the petitioners. Admittedly, the defendants executed two sale deeds during the pendency of the suit. The execution of the sale deeds by the defendants to stranger of the suit who were later on added as defendants in the suit shall be hit by principle of lis pendense. In a suit for declaration of title, if the defendants-transferor is not found to have title over the disputed land, the purchaser/transferee shall have got no title over the suit land and for that it is not necessary to amend the suit and add prayer for declaration of the sale deed as void ab initio and illegal. In addition to this, it appears that the newly purchaser from the defendant of the suit filed written statement along with counter-claim in the year 2006. The plaintiff came to know about the execution of the sale deed in the year 2006 itself. For declaration of sale deed to be void ab initio, illegal and without



consideration, the period is prescribed for three years but the plaintiff sought addition of relief for declaration of the sale deed illegal, void, ab initio and without consideration after more than ten years and, therefore, the relief itself appears to be barred by law of limitation.

Having considered the facts aforesaid, I do not find any illegality or jurisdictional error in the order impugned. Accordingly, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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