

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17673 of 2013

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1. Amitabh Gupta @ Amitabh Son of Late Sachchida Prasad, Resident of Village Marwari Mohalla, Ward No. 7, Town Gopalganj, P.O., P.S. and District- Gopalganj.
 2. Vikash Kumar Gupta Son of Late Sachchida Prasad, Resident of Village Marwari Mohalla, Ward No. 7, Town Gopalganj, P.O., P.S. and District- Gopalganj
 3. Seema Gupta Daughter of Late Sachchida Prasad Resident of Village Marwari Mohalla, Ward No. 7, Town Gopalganj, P.O., P.S. and District- Gopalganj
 4. Shweta Gupta Daughter of Late Sachchida Prasad Resident of Village Marwari Mohalla, Ward No. 7, Town Gopalganj, P.O., P.S. and District- Gopalganj
 5. Anamika Gupta Daughter of Late Sachchida Prasad Resident of Village Marwari Mohalla, Ward No. 7, Town Gopalganj, P.O., P.S. and District- Gopalganj
 6. Anuradha Gupta Daughter of Late Sachchida Prasad Resident of Village Marwari Mohalla, Ward No. 7, Town Gopalganj, P.O., P.S. and District- Gopalganj
 7. Kalawati Devi Wife of Late Sachchida Prasad Resident of Village Marwari Mohalla, Ward No. 7, Town Gopalganj, P.O., P.S. and District- Gopalganj

.... Petitioners

Versus

1. Nagendra Kumar Singh @ Nagendra Kumar Son of Late Satya Narayan Singh, Resident of Village- Konhawa, P.O. and P.S. Gopalganj, At Present Resident of Chandra Gokula Road, Town Gopalganj, P.O. and P.S. Gopalganj, District: Gopalganj.
2. Binod Kumar Son of Late Satya Narayan Singh Resident of Village- Konhawa, P.O. and P.S. Gopalganj, At Present Resident of Chandra Gokula Road, Town Gopalganj, P.O. and P.S. Gopalganj, District: Gopalganj.
3. Pramod Kumar Son of Late Satya Narayan Singh Resident of Village- Konhawa, P.O. and P.S. Gopalganj, At Present Resident of Chandra Gokula Road, Town Gopalganj, P.O. and P.S. Gopalganj, District: Gopalganj.
4. Sangita Kumari Daughter of Late Satya Narayan Singh Resident of Village- Konhawa, P.O. and P.S. Gopalganj, At Present Resident of Chandra Gokula Road, Town Gopalganj, P.O. and P.S. Gopalganj, District: Gopalganj.
5. Raj Lakshmi Kumari Daughter of Late Satya Narayan Singh Resident of Village- Konhawa, P.O. and P.S. Gopalganj, At Present Resident of Chandra Gokula Road, Town Gopalganj, P.O. and P.S. Gopalganj, District: Gopalganj.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Nagendra Rai, Advocate
Mr. Navin Nikunj, Advocate
For the Respondent/s : Mr. Harendra Prasad, Advocate
Mr. Pratush Kr. Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

4 07-03-2018 The petitioners are defendants of Title Suit No.379 of 1989. They have filed this writ application for setting aside the order dated 15.06.2013 passed by Additional Munsif-IX, Gopalganj whereby and whereunder the learned Munsif allowed the amendment in favour of the plaintiffs.

2. Heard learned counsel for the petitioners and the respondents.

3. At the time of hearing, the learned counsel for the petitioners submitted that the court below has allowed the amendment without considering the merit of the case. He submits that the impugned order is not a speaking order and the court below allowed the amendment observing that the proposed amendments are simple in nature and do not change the nature of the suit. The learned counsel for the petitioners fairly concedes that the amendment relating to paragraphs 2, 3, 8, 10 and 12 are simple in nature. The main objection of the learned counsel for the petitioners is that by proposed amendment the plaintiffs want to



seek declaration with respect to a document dated 17.07.1989 executed by Dwarikamal in favour of Kalawati Devi as void *ab initio*. The said amendment is barred by limitation. The plaintiffs got knowledge about the said sale deed in the year 1989 but they did not take step for amending the plaint and so the claim of plaintiffs is barred by limitation.

4. Be that as it may. I find that most of the amendments are simple in nature. So far amendment relating to declaration of a document is concerned, the petitioner has seriously challenged the same as barred by limitation. It is not in dispute that limitation for declaration with respect to a document relates to the year 1989. The suit was filed in the year 1989 but the amendment petition has been filed on 06.06.2013 i.e. after a delay of about 24 years. This relief has been added as per the impugned order dated 15.06.2013 on the petition filed on 06.06.2013. According to the case of defendants, the relief of plaintiffs is barred by limitation as a valuable right has accrued to the defendants on account of not filing the suit within the prescribed period of limitation. The said amendment does not prejudice the defendants in view of the fact that they have right to raise the plea of limitation at the time of trial.

5. In view of above facts I do not find any jurisdictional



error in allowing the amendment by the court below. It is, however, observed that the plea of applicability of limitation from the date of order of allowing amendment shall be considered during trial.

6. With the above observation, this writ application is disposed of.

(Sanjay Kumar, J)

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