

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.157 of 2019

1. Upendra Sahni son of Late Ram Sharan Sahni, resident of village - Baruar,
P.S.-Babubarhi, District-Madhubani
2. Yugeshwar Mukhiya, son of Late Khattar Mukhiya, resident of village-
Kalikapur, P.S.- Kaluahi, District- Madhubani

Defendants 11 and 12- Petitioners

Versus

1. Akhtari Khatoon wife of Late Noor Mohammad
2. Reyaj Ahmad @ Raju Ahmad son of Late Noor Mohammad
Both resident of Mohalla-Laheriyaganj, Tole-Pachhwari, Ward No.1,
P.S. Town, District-Madhubani

Plaintiffs-Respondents

3. Wakil Jha son of Late Tarakant jha
4. Veena Devi wife of Wakil Jha, resident of village-Raghuni Behat, P.S.-
Rajnagar, District-Madhubani.

Defendants 1st party-Respondents

5. Kiran Devi wife of Lakshmi Narayan Jha, resident of village-Raghuni Behat,
P.S.-Rajnagar, District-Madhubani
6. Ajeet Kumar Jha son of Uttam Kumar Jha, resident of village- Basauli,
Naya Gaon, P.S.-Keoti, District-Darbhangha presently residing at Mohalla-
Aadarsh Nagar Colony, P.S.-Rajnagar, District-Madhubani

Defendants 2nd Party-Respondents

7. Md. Moti, son of Late Abdul Samad
8. Md. Janhagir
9. Md. Aalamgir

Both sons of Late Md. Kari @ Fool Hasan

10. Md. Mahmood
11. Md. Shapup
12. Md. Alauddin

All sons of Late Hasim

13. Md. Hajrat son of Late Md. Daud

All resident of Mohalla-Laheriyaganj, Tole Pachhwari, Ward no.1,
P.S.-Town, District Madhubani

Defendants 3rd Party-Respondents



Appearance :

For the Appellant/s : Mr.Baidya Nath Thakur, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 07-03-2019

Heard learned counsel for the petitioners.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 22.12.2018 passed by the learned Sub-Judge-II, Madhubani in Title Suit No. 51 of 2007 whereby a petition filed by the plaintiffs-respondents under Order VI Rule 17 read with Section 151 of the Civil Procedure Code (for short 'C.P.C.') seeking striking off the defendants-petitioners from the cause title was allowed.

3. The plaintiffs-respondents no.1 and 2 filed Title Suit No. 51 of 2007 for declaration that the two sale deeds dated 25.04.2007 executed by the defendants 3rd party in favour of the defendants 1st party and 2nd party with respect to Schedule 4 and 5 properties respectively are null and void. The defendants-resopondents 1st and 2nd party filed their joint written statement on 16.08.2000. Subsequently, the petitioners filed intervention application for impleading them as party defendants, which was allowed by the court and they were impleaded as defendant nos. 11 and 12. Consequently, they filed



their joint written statement. Later on the plaintiffs-respondents filed an application under Order VI Rule 17 read with Section 151 of the C.P.C on 31.10.2018 for striking off the names of the defendants-petitioners from the cause title on the plea that they are neither necessary nor proper parties. They contended that a compromise has been reached between the plaintiffs and the rest of the defendants. As the petitioners are not necessary parties, their names should be struck off. On such application, the court below after hearing the parties allowed the application of the plaintiffs vide impugned order dated 22.12.2018 and directed for striking off the names of the petitioners from the cause title.

4. Being aggrieved by the said order Mr. Thakur, learned counsel appearing for the petitioners has filed the instant application under Article 227 of the Constitution of India. He has submitted that compromise reached between the parties except the petitioners is collusive inasmuch as both the registered sale deeds dated 04.03.2010 executed by the plaintiffs in favour of the defendant nos. 11 and 12 were sought to be nullified thereby. He has further contended that in view of the Order XXIII Rule 3 of the C.P.C. only when a lawful compromise is reached between the parties, the court shall order such compromise to be recorded and pass a decree in



accordance therewith.

5. However, in the present case, one of the points in the compromise petition is that the aforesaid sale deeds dated 04.03.2010 are null and void. The said statement seriously affects the right, title and interest of the petitioners. That being so, the compromise as reached between the parties are not legal so far as the petitioners are concerned.

6. Having heard learned counsel for the petitioners and perused the impugned order dated 22.12.2018, I think it apposite to extract order VI Rule 17 of the C.P.C. here under:

“Order 6 Rule 17. Amendment of pleadings.-The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of



trial."

7. From the perusal of the aforesaid provision of the CPC, it would be manifest that the said provision gives power to the court to allow parties to alter, amend or modify the pleading at any stage of proceedings.

8. The provision is in two parts. In the first part the word 'may' gives discretionary power to the court to allow or disallow application of pleadings, but in the second part, the word 'shall' makes it mandatory for the court to allow the application for amendment of pleadings.

9. However, the court will allow amendment only if it is necessary to determine the controversy between the parties. The purpose of the provision to promote ends of justice. The proviso gives discretion to the court to decide on the application after commencement of the trial.

10. As far as the suit, in question, is concerned, as noted above, the plaintiffs-respondents have filed a suit for declaration that the two sale deeds dated 25.04.2007 executed by the defendants 3rd party in favour of the defendants 1st party and 2nd party with respect to Schedule 4 and 5 properties respectively are null and void. No relief has been sought for in the suit as against the petitioners of this case. They are



apprehensive about mentioning of one sentence in the compromise petition filed before the court below.

11. It is well settled position in law that any decree passed by the court would bind only the parties to the suit. In case, the petitioners are not a party to the suit and no relief is sought for against them, by no stretch of imagination, it can be said that the compromise decree between the parties would in any manner affect him.

12. The order passed by the court below is neither without jurisdiction nor perverse.

13. In that view of the matter, I see no reason to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of India.

14. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.03.2019
Transmission Date	

