

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1610 of 2018

1. Ranvijay Mandal Son of Late Rural Mandal.
2. Bidur Mandal, Son of Late Rural Mandal.
3. Budhan Mandal, Son of Late Rudal Mandal.
4. Hansraj Mandal, Son of Late Rudal Mandal.
5. Babu Saheb Mandal, Son of Late Rudal Mandal. All no. 1 to 5 are Resident of Village-Bhikhana, P.S. Rupauli, District-Purnea.
6. Raghubansh Prasad Singh, Son of Late Jagdish Prasad Singh.
7. Urmila Devi, D/o Late Babuwan Singh, Wife of Kedar Singh.
8. Ganesh Prasad Singh Son of Late Rameshwar Singh
9. Pramod Prasad Singh, Son of Late Rameshwar Singh.
10. Raghubansh Mandal, Son of Late Sipal Mandal
11. Gyanchand Mandal Son of Late Sipal Mandal. All No. 1 to 5 are Resident Village-Bhikhana, P.S. Rupauli, P.O. Bahdura, District-Purnea.

... .. Petitioners

Versus

1. Shambhu Mandal Son of Late Kameshwar Mandal.
2. Ram Chandra Mandal Son of Late Kameshwar Mandal. null
3. Narad Mandal, Son of Brahmdeo Mandal. .
4. Sanjay Mandal, Son of Anup Mandal. .
5. Disko Mandal, Son of Late Sarwan Mandal. All No. 1 to 5 are Resident Village-Bhikhana, P.O. Bahdura, P.S. Rupauli, District-Purnea.
6. Raghubansh Prasad Singh, Son of late Jagdish Prasad Singh
7. Urmila Devi, D/p Late Babuwan Singh, Wife of Kedar Singh
8. Ganesh Prasad Singh Son of Late Rameshwar Singh

... .. Respondents

Appearance :

For the Appellant/s : Mr. Bijendra Kumar Singh
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 20-09-2019



Heard learned counsel for the petitioners.

2. The petitioners are the plaintiffs in Title Suit No. 34 of 1999. They have filed the present application under Article 227 of the Constitution of India for setting aside the order dated 26.07.2018 passed by the learned Munsif, Dhamdaha in Title Suit No. 34 of 1999 whereby the application dated 06.07.2018 filed by the petitioners under Order VI, Rule 17 read with Section 151 of the Code of Civil Procedure (for short 'CPC') has been dismissed.

3. Learned counsel appearing for the petitioners submitted that the plaintiffs have filed the suit for declaration that the sale deeds executed by the defendant 2nd party in favour of other defendants for the suit land are illegal and void and not binding on the plaintiffs and further sought relief for declaration that the order dated 15.06.1998 passed by the Circle Officer, Rupouli, Purnea in Mutation Case Nos.937/97 and 937/97(K) and the analogous order dated 31.12.1998 passed by the Deputy Collector Land Reforms, Dhamdaha in Mutation Appeal Nos. 26 of 1998 and 27 of 1998 are void, illegal, without jurisdiction and not binding on the plaintiffs.

4. He contended that inadvertently the plaintiffs could not assert that they hold title to the suit land. Pleading in that regard was silent in the plaint. In that view of the matter, it was



deemed necessary to amend the plaint and, therefore, an application under Order VI, Rule 17 of the CPC was filed before the court of Munsif with a prayer that in para 6 of the plaint after the word thereof “and found title to the same” be allowed to be written by deleting full stop. He contended that the second item of amendment in regard to declaration of title of the plaintiffs on the basis of title deed dated 23.09.1997 was also not pleaded in the plaint. Hence, relief “A” requires further amendment by stating that the title of the plaintiff be also declared on the basis of sale deed dated 23.09.1997.

5. He contended that the proposed amendment would not change the nature of the suit and was not barred by law of limitation. Hence, there was no reason for the trial court to have rejected the application filed by the petitioners.

6. Having heard learned counsel for the petitioners and carefully perused the materials on record including the order impugned, I find that admittedly the suit was filed on 23.03.1999. The issues were framed on 14.03.2012. After framing of the issues, the trial commenced and three witnesses on behalf of the plaintiffs have already been examined.

7. In the amendment petition, there is no averment that in spite of due diligence the plaintiffs could not raise the matter



before commencement of the trial. In absence of the aforesaid pleading, the trial court dismissed the application filed by the petitioners taking into consideration that no reason for filing a petition after undue delay of 19 years has been given by the petitioners. The trial court also observed that allowing the amendment would amount to reopening the suit from its inception after 19 years of its filing. It also took into consideration several directions given by this Court for early disposal of the case without giving any adjournment to the parties to the suit as one of the fetters for not allowing the application filed by the petitioners under Order VI, Rule 17 of the CPC.

8. The proviso to Order VI, Rule 17 of the CPC stipulates that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence the party could not have raised the matter before commencement of trial.

9. Since no pleading was advanced by the petitioners regarding justification for filing amendment petition after commencement of trial in compliance of the proviso to Order VI, Rule 17 of the CPC, no error can be found with the order impugned.



10. The application lacks merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25-09-2019
Transmission Date	

