

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.294 of 2019**

Md. Mustaque Alam, son of late Md. Khalil Ahmad, resident of Gurhatta, P.S-
Mojahidpur, P.O-Bhagalpur City, Bhagalpur-812001

... .. Defendant/Petitioner

Versus

Md. Qayam Uddin alias Md. Qayam, son of Md. Ibrahim alias Hazi
Mohammed Ibrahim resident of Mohalla-Hosainabad P.S- Mojahidpur,
District- Bhagalpur

... .. Plaintiff/Respondent

Appearance :

For the Appellant/s : Mr. Bimlendu Mishra, Advocate

For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 03-05-2019

Heard learned counsel for the petitioner and perused the
materials available on record.

2. This application under Article 227 of the Constitution
of India has been filed by the petitioner for setting aside the order
dated 27.04.2017 passed by the learned Sub Judge-V, Bhagalpur in
Title Suit No.57 of 1996 whereby he has allowed the petition dated
15th July, 1999 filed by the respondent under Order 1 Rule 10(2) of
the Code of Civil Procedure (for short 'CPC').

3. The short facts of the case, according to the
petitioner is that the plaintiff-respondent has filed Title Suit No.57
of 1996 for decree for Specific Performance of Contract against



the defendant-petitioner. In the said case, the plaintiff-respondent filed an application on 15th July, 1999 for addition of three defendants, namely, Md. Khurshid Alam, Bibi Afsana Khatoon, Md. Chand Ali as defendants in the suit. He pleaded that after filing the suit, he came to know on 10.09.1998 that the petitioner had sold away the suit property to the aforesaid Md. Khurshid Alam, Bibi Afsana Khatoon and Md. Chand Ali. Thereafter, he inspected the records in the registration office and could know that the petitioner had sold away the entire suit property to the aforesaid three vendees. After having obtained the certified copy, an application was filed, which was allowed by the court below, vide impugned order dated 27.04.2017.

4. The contention of the petitioner is that while passing the order impugned, the trial court erred in law as well as on facts. A rejoinder was filed in the court below by the petitioner to the petition of the plaintiff dated 15.07.1999, in which it was claimed that in an Eviction Suit, vide Eviction Case No.35 of 1994 filed by the petitioner, the father of the respondent was made party. In that case, the respondent had also deposed as witness no.9. In his deposition, he had expressed about the knowledge of the sale deeds in question. He contended that once the aforesaid fact was brought to the notice of the trial court, the trial court ought to have



examined the fact that an application filed under Order 1 Rule 10(2) was barred by law of limitation. He contended that since the application was barred by law of limitation, as it was filed beyond three years from the date of knowledge, the trial court ought to have dismissed the application filed under Order 1 Rule 10(2) CPC by the plaintiff-respondent.

5. In order to show that the plaintiff-respondent had knowledge of the sale deeds executed on 20.11.1994, he has drawn my attention towards the deposition of the respondent, who was examined as witness no.9 in Eviction Suit No.35 of 1994. On perusal of the same, I find that the said deposition was recorded on 18th April, 2006. In case, in April, 2006, in course of deposition, he has stated about the knowledge of the sale deed dated 28.11.1994, there can not be any presumption that the respondent had knowledge about the sale deed when it was executed.

6. Order 1 Rule 10(2) gives discretionary power to the court to add the name of any person, who ought to have been joined, whether as plaintiff and defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit to be added.



7. The petitioner does not dispute the fact that he has transferred the suit property in favour of the three persons, who have been added as defendants at the request of the respondent. Once the suit property has been transferred in their name, indisputably, those three persons are necessary parties to the suit.

8. In that view of the matter, if the court has allowed the application of the plaintiff-respondent and impleaded those three persons as defendants in the suit, no illegality can be found with the order impugned.

9. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.05.2019
Transmission Date	NA

