

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10762 of 2011

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1. MAHESHIYA DEVI W/o Late Vishwanath Singh, resident of village-Puraini Khurd, P.S. Rajpur, District-Buxar
 2. Umrawati Devi, D/o Late Vishwanath Singh, W/o Sri Bhagwan Singh, resident of village-Bahuara, P.S. Khchhila, District-Bhabhua at present village-Puraini Khurd, P.S. Rajpur, District-Buxar

... .. Petitioner/s

Versus

1. (i). SHANTI KUER
(ii). Manoj Kumar Singh
(iii). Jai Prakash Singh
All residents of village-Puraini Khurd, P.O. Tetua Rajpur, P.S. Rajpur, District-Buxar
- (iv). Sharda Devi, W/o Satendra Singh, resident of village-Jamauli, P.O. & P.S. Rajpur, District-Buxar
2. Kedar Singh
3. Janardan Singh
S/o Ghura Singh, both residents of village-Chhotki Puraini, P.S. Rajpur, District-Buxar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Raj Kishore Prasad Singh Mr. Anil Kumar Singh
For the Respondent/s	:	Dr. Anshuman Mr.Kuber Pathak

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 20-09-2019

The present writ petition has been filed for setting aside the order dated 04.08.2009 passed by the Additional Munsif-IV, Buxar in Title Suit No. 92 of 1986, whereby and whereunder petition filed by the petitioners for amendment of the plaint dated 19.12.2008, has been rejected.

Brief facts of the case are that the original petitioners /plaintiffs had filed a suit for declaration that the



deed of gift dated 31.01.1983 directed to have been executed by one Vishwanath Singh in favour of the respondents is illegal, void, inoperative and without title. The said suit was registered as Title Suit No. 92 of 1986. The said suit was decreed by a judgment dated 23.11.1996 against the defendants/respondents herein whereafter an appeal bearing Title Appeal No. 1 of 1997 was filed by the respondents before the District Judge, Buxar and subsequently the same was transferred to the Court of Additional District & Sessions Judge, F.T.C.-II who by his judgment dated 27.03.2008 had set aside the judgment and decree passed by the learned trial court and remanded the case back for fresh adjudication and passing of fresh judgment, in accordance with law. Immediately, after the aforesaid order of remand, the counsel for the petitioners herein had filed a petition on 11.09.2008 for amendment of the plaint, as far as its relief portion is concerned, considering the order of remand, whereafter, the respondents herein had filed a rejoinder dated 15.10.2008. The said petition appears to have not been pressed by the counsel for the petitioners since there was some error/discrepancy in the said petition, hence, a fresh amendment petition dated 19.12.2008 was filed wherein the prayer portion of the suit was sought to be amended and the



plaintiffs/petitioners had prayed for addition of prayer to the effect:- “*for recovery of possession over the suit property/suit land*”. The learned trial court by the impugned order dated 04.08.2009 has rejected the petition of the plaintiffs/petitioners dated 19.12.2008 on the ground of ill intention of the plaintiffs/petitioners of attempting for a *de novo* trial of the case in hand.

The learned counsel for the petitioners has submitted that as the appellate court has remanded the matter for fresh judgment, in accordance with law, since the learned court below had not given any finding on Issue No. III i.e. as to whether the suit was hit by Section 34 of the Specific Relief Act, the plaintiffs/petitioners have thought it proper to seek an amendment in the relief portion by adding further relief i.e. for recovery of possession over the suit land, inasmuch as the relief regarding recovery of possession over the suit land flows directly from the main relief and the declaration sought i.e. for declaring the deed of gift dated 31.01.1983 to be illegal and void. Thus, the submission of the learned counsel for the plaintiffs/petitioners is that even the learned court below is competent to grant the consequential/other relief under the provisions of Order 7 Rule 7 of the Code of Civil Procedure,



1908. It is further submitted that the nature of the suit is not going to change and there is also no need for a *de novo* trial.

Per contra, the learned counsel for the respondents herein has submitted that the nature of the suit would be changed in case the proposed amendment is allowed to be made and the same would also require leading of fresh evidence, in effect leading to a *de novo* trial, hence, the order impugned dated 04.08.2009 passed by the learned court below is not required to be interfered with. In any case the learned counsel for the respondents has fairly submitted that in case this Court allows the present writ petition and permits the plaintiffs/petitioners to amend the plaint, a time limit should be fixed for the purposes of passing of the final judgment in the aforesaid pending Title Suit No. 92 of 1986.

I have heard the learned counsel for the parties and I find that the proposed amendment, sought to be made in the relief portion by the plaintiffs/petitioners herein, as mentioned in their petition dated 19.12.2008 regarding adding further prayer to the effect that the plaintiffs/petitioners be entitled to recovery of possession over the suit land, is only a consequential relief flowing from the main relief of declaring the sale deed dated 31.03.1983 to be illegal and void and



admittedly no further evidence is required as has also been agreed in between the learned counsels appearing for the respective parties before this Court.

In such view of the matter, this Court finds that it would be expedient and in the interest of justice to permit the amendment sought for by the plaintiffs/petitioners herein vide their petition dated 19.12.2008. It is a well settled law that procedural law is intended to facilitate and not to obstruct the course of substantive justice. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court reported in ***A.I.R. 1978 SC 484***. Thus, this Court is of the view that there would be failure of justice as well as irreparable injury to the petitioners if the impugned order is allowed to stand. It is a settled law that the Courts always permit the plaintiff to amend a plaint to give a relief which is impliedly asked by the plaintiff and it does not alter the nature of the suit. In the instant case, as discussed hereinabove, neither the nature of the suit would change by permitting the amendment so sought for by the plaintiffs/petitioners nor there is any need of *a de novo* trial.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the present writ petition is allowed and the order passed by the Additional



Munsif-IV, Buxar dated 04.08.2009 in Title Suit No. 92 of 1986 is set aside and it is directed that the necessary amendment sought for by the plaintiffs/petitioners herein vide their petition dated 19.12.2008 be made in the plaint. If so advised, the defendants-respondents may file their additional written statement to the aforesaid amended plaint within a period of eight weeks from today whereafter, the learned court below shall make all endeavours to conclude the proceedings including arguments and pronounce the judgment within a period of six months, thereafter.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	13.10.2019
Transmission Date	

