

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1568 of 2019

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Jitendra Sharma @ Jitendra Kumar son of Late Sideshwar Singh @
Siddheshwar Pd. Sharma, resident of Village- Nizamuddinpur, Jehanabad,
Pargana- Bhelawar, P.S. and District- Jehanabad.

... .. Appellant/s

Versus

1. Satish Prasad Singh @ Shyam Deo Singh S/o Late Bhairon Singh, Resident of Village- Parsawan, P.S.- Pandarakh, District- Patna, at present resident of village- Nizamuddinpur, P.s. and Distt.- Jehanabad.
2. Shashi Bhushan Prasad Singh, S/o- Late Bhairon Singh, Resident of Village- Parsawan, P.S.- Pandarakh, District- Patna, at present resident of village- Nizamuddinpur, P.s. and Distt.- Jehanabad.

...Respondent 1st set/Plaintiffs

3. Manoj Sharma @ Gonu Sharma, S/o Batchu Singh, Resident of Village- Nizamuddinpur, P.S. and Distt- Jehanabad.
4. Anil Singh, S/o- Late Krishna Sharma, Residence of Village and P.O.- Banwaria, P.S.- Ghoshi, Distt.- Gaya.
5. Praveen Singh, S/o Late Krishna Sharma, Residence of Village and P.O.- Banwaria, P.S.- Ghoshi, Distt.- Gaya.
6. Pankaj Kumar, S/o Late Kaushal Kishore, Resident of Village- Malahad, P.S.- Goh, Distt.- Aurangabad.
7. Niraj Kumar, S/o Late Kaushal Kishore, Resident of Village- Malahad, P.S.- Goh, Distt.- Aurangabad.
8. Runi Kumari, D/o- Kaushal Kishore, Resident of Village- Sonbhadra, P.S.- Karapi, Distt.- Arwal.

... ..Respondents 2nd set/Defendants

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Appearance :

For the Appellant/s : Mr.Alok Ranjan
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

25-11-2019

The present petition has been filed “*for setting aside the order dated 24.06.2019 passed by the learned court of Munsif Jehanabad in Title Suit No. 40 of 2006, rejecting the petition filed by the petitioner (Defendant No.2) under Order VII Rule*



11 of the Code of Civil Procedure, to reject the plaint of the aforesaid suit.”

2. Mr. Rajendra Narayan, learned Senior Counsel, appearing on behalf of the petitioner-defendant no.2, submits that the learned court below has failed to exercise the jurisdiction vested in it for rejection of the plaint. It is submitted that the impugned order dated 24.06.2019 has been passed in illegal exercise of jurisdiction by allowing the plaint to continue, even though the same was hopelessly barred by limitation and did not also disclose any cause of action. It is submitted that the mother of the plaintiffs-respondents(1st set) admittedly acquired the suit property by way of gift from her father in the year 1969 which was duly sold by her through three registered sale deeds dated 26.04.1970 executed by her in favour of respondent nos. 3 and 4 (defendants) in the year 1970. It is submitted that the mother of the plaintiffs-respondents (1st set) did not challenge the sale deeds as fabricated or fraudulently executed during her lifetime until her death sometime in the year 2002 or 2003. It is submitted that the plaintiffs-respondents (1st set) did not also challenge the three sale deeds dated 26.04.1970 within the limitation period upon attaining their majority. The plaint has been filed in effect calling into question the three sale deeds



dated 26.04.1970 for the first time in the year 2006 by way of Title Suit No. 40 of 2006 which was hopelessly barred by limitation. Moreover, the averments contained in the plaint do not disclose any clear cause of action as the plaintiffs-defendants (1st set) have sought to somehow make out a case that the gift by their *naana* had been made in the year 1969 to his only daughter (their mother) which ought to be considered as having been made also in favour of the plaintiffs, who were minor at that time.

3. Having heard learned Senior Counsel for the petitioner and on consideration of materials on record, this Court is not inclined to interfere in the matter.

4. The learned court below while passing the impugned order dated 24.06.2019, has duly taken note of the averment made in paragraph 23 of the plaint to the effect that on 16.02.2006 the plaintiffs-defendants (1st set) came into knowledge about the *mala fide*, deceitful and fraudulent intent and connivance in the matter of the three sale deeds dated 24.06.1970 purported to have been executed by the mother of the plaintiffs-defendants (1st set). The provisions of the Limitation Act have duly been considered. The learned court below has also taken note of various judicial decisions and has



come to the finding that the plaint discloses a valid cause of action, observing that the element of fraud is a mixed question of law and fact and cannot be decided without evidences adduced on behalf of the parties.

5. This Court therefore does not find any error of jurisdiction on the part of the learned court below in passing the impugned order dated 24.06.2019. The petition stands dismissed.

(Vikash Jain, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	6.12.2019
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