

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.276 of 2018

- 1.1. Om Prakash Gupta @ Om Prakash Son of Late Hardwar Prasad @ Hardwar Prasad Sah, Resident of Village- Nipaniya, P.O. Salempur, P.S. - Isuapur, District - Saran, Pin - 841411.
- 1.2. Sudhir Kumar Son of Late Hardwar Prasad @ Hardwar Prasad Sah, Resident of Village- Nipaniya, P.O. Salempur, P.S. - Isuapur, District - Saran, Pin - 841411.
- 1.3. Reena Kuar wife of Late Sunil Prasad Gupta (daughter-in-law of the petitioner) Resident of Village- Nipaniya, P.O. Salempur, P.S. - Isuapur, District - Saran, Pin - 841411.
- 1.4. Riya Kumari (Minor) daughter of Late Sunil Prasad Gupta through her mother and legal guardian Reena Kuar, Granddaughter. Resident of Village- Nipaniya, P.O. Salempur, P.S. - Isuapur, District - Saran, Pin - 841411.
- 1.5. Rohit Kumar (Minor) Son of Late Sunil Prasad Gupta through his mother and legal guardian Reena Kuar, Grandson. Resident of Village- Nipaniya, P.O. Salempur, P.S. - Isuapur, District - Saran, Pin - 841411.
- 1.6. Anita Devi Wife of Anil Kumar Gupta, Daughter Resident of Village- Nipaniya, P.O. Salempur, P.S. - Isuapur, District - Saran, Pin - 841411.
- 1.7. Sunita Devi Wife of Saroj Kumar Gupta, daughter. Resident of Village- Nipaniya, P.O. Salempur, P.S. - Isuapur, District - Saran, Pin - 841411.

... .. Petitioner/s

Versus

1. Surendra Prasad Sah Son of Late Kedar Prasad Sah, Resident of Village- Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, Presently residing at Purani Gola, Marhowrah, P.O.and P.S.-Marhowrah, District-Saran, PIN-841418
2. Rajeshwar Prasad sah, Son of Late Vishwanath Prasad Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
3. Prabhu Prasad Sah Sons of Late Vishwanath Prasad Sah Resident of Village- Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
4. Ramashankar Prasad Son of Late Vishwanath Prasad Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
5. Santosh Prasad sah, Son of Late Maheshwar Prasad Sah Resident of Village- Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
6. Ritesh Prasad sah, Sons of Late Maheshwar Prasad sah Resident of Village- Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
7. Rakesh Prasad sah,
8. Vikash Prasad sah, Son of Late Maheshwar Prasad Sah Resident of Village- Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
9. Kanti Kuar, Wife of Late Rameshwar Prasad sah. Resident of Village- Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
10. Sanjay Prasad @ Munna Prasad Son of Late Rameshwar Rameshwar Prasad



Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.

11. Rajesh Prasad Sons of Late Rameshwar Prasad sah. Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
12. Rakesh Prasad, Son of Late Rameshwar Prasad Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
13. Pinku Devi, D/o Late Rameshwar Prasad sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
14. Dineshwar Prasad Sah, Sons of Late Satyanarayan Prasad Sah. Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
15. Chandeshwar Prasad Sah, Son of Late SatyaNarayan Prasad Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
16. Dev K Umar Sah, Son of Late Dharmnath Prasad Sah, All are Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
17. Lal Babu Prasad, Son of Late Parashnath Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
18. Bacha Prasad Sons of Late Parashnath Sah. Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
19. Ajay Kumar Prasad Son of Late Rajendra Prasad Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
20. Murari Prasad Son of Late Rajendra Prasad Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
21. Bharat Prasad Son of Late Rajendra Prasad Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
22. Musmat Sita Devi Wife of Late Rambabu Prasad Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
23. Ajay Prasad Sons of Late Shyam Sundar Sah. Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
24. Munna Prasad Son of Late Shyam Sundar Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
25. Chitranjan Prasad Son of Late Shyam Sundar Sah Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
26. Ranjit Prasad Son of Late Kamla Prasad Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
27. Birendra Prasad Sons of Late Kamla Prasad Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
28. Binod Kumar Son of Late Kamla Prasad Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
29. Bablu Kumar Son of Late Kamla Prasad Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
30. Vinay Kumar Son of Late Yogendra Prasad. Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
31. Virendra Prasad Son of Late Yogendra Prasad. Resident of Village-Nipaniya,



P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.

32. Sushil Prasad Son of Late Ram Yogendra Prasad Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.
33. Umashankar Prasad Son of Late Ram Ayodhya Prasad Resident of Village-Nipaniya, P.O.-Salempur, P.S.-Isuapur, District-Saran, PIN-841411.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Singh
For the Respondent/s : Mr. Surendra Kumar Singh, Sr. Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 17-10-2022 Heard Mr. Sanjay Kumar Singh, learned counsel for the petitioner and Mr. Surendra Kumar Singh, learned senior counsel for the respondents.

The petitioner is aggrieved by the order dated 04.01.2018 passed by learned Sub Judge XIth, Saran at Chapra whereby the review petition filed by the respondent-plaintiff against the order dated- 22.09.2017 has been allowed.

The petitioner is a defendant in the Title Suit No. 196 / 2014 filed by the plaintiff-respondent for partition. In the said suit the plaintiff / respondent filed an amendment petition seeking to amend the plaint by incorporating the statement in the plaint viz “that Mahavir Sah was an educated person and he never executed the sale deed dated 12.02.1974 in favour of Hardwar Prasad @ Hardwar Prasad Sah, who is the father of the present petitioners / defendants. Further, amendment has been sought in the prayer portion of the plaint to the extent for



declaration that the sale deed dated 12.02.1974 in question is non-operative, void and not binding upon the plaintiff”.

The amendment sought by the plaintiff was dismissed by the learned trial court by order dated 22.09.2017 on the ground that the amendment is time barred and further it will change the nature of the suit and cause of action both.

Learned counsel for the petitioner submit that against the order dated 22.09.2017 by which the amendment of the plaint was rejected, the plaintiff-respondent filed a review petition before the learned trial court under Order 47 Rule 1 of the C.P.C. and the trial court on erroneous ground by the impugned order dated 04.01.2018 has allowed the review petition and consequently the amendment sought by the plaintiff which was rejected by the main order dated 22.09.2017 has been allowed. Learned counsel further submit that the ground on which the review petition filed by respondent -plaintiff has been allowed by the trial court is not one of the grounds for review inasmuch as the trial court arrived at the conclusion that during the course of hearing of the amendment petition the side of the plaintiff could not place the fact before the court in proper manner and also came to the conclusion that the amendment was not time barred. Meaning thereby that the learned trial court



has wrongly exercised its jurisdiction for review and has allowed the review petition as if the trial court is seating in appeal upon the previous order dated 22.09.2017.

Mr. Surendra Kumar Singh, learned senior counsel appearing for the respondent - plaintiff submits that the amendment sought by the plaintiff-respondent is not time barred and from the date of knowledge it is within time. However, relying upon a judgment of the Hon'ble Supreme Court reported in AIR 2001 SC 699 Ragu Thilak D. John *versus* S. Rayappan and Others, he submits that the relief sought by way of amendment was barred by time is arguable question and the plaintiff during the course of trial can show that the amendment is not time barred and will not change the nature of the suit. He also placed reliance upon the provisions of Order 47 Rule 1 of the C.P.C. and submits that review can be done by the court on the ground of error apparent on the face of record and for any other sufficient reason. He also submits that from the discovery of new and important matter or evidences which after the exercise of due diligence was not within the knowledge or could not be produced by him at the time when the decree was passed or order made, the same can be made a ground of amendment also.



I have heard learned counsel for the parties and perused the impugned order. From perusal of the impugned order it transpires that the learned trial court has allowed the review petition on the ground that at the time of hearing the respondent-plaintiff could not place their case or their point in proper manner and has also arrived at the finding without any reason that the amendment is not time barred.

From perusal of the facts of the case and the grounds on which review petition has been allowed, in my opinion, none of the conditions for review of the order is attracted in the present case and the trial court has allowed the review petition as if it is seating as an appellate authority upon the previous order dated 22-09-2017 by which the amendment sought in the plaint was rejected.

Accordingly, I do not find any force in the argument of learned counsel for the respondents. In the result, the order impugned dated 04.01.2018 passed in Title Partition Suit No. 196 / 2014 is hereby set-aside.

The application stands disposed of.

(Anil Kumar Sinha, J)

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