

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1515 of 2018

=====

Md. Mokhtar Miya @ Md. Mokhtar @ Md. Mokhtar Ahmad, son of Late Ashraf Ali, resident of village Itaun, Pargana Chanan, P.S. Chanan, District Lakhisarai

... .. Petitioner/s

Versus

1. Ramsuchit Kumar Yadav, son of Shri Arjun Yadav, resident of village Nagardar (Maliya), Pargana Chanan, P.S. Chanan, P.O. Maliya, District Lakhisarai

2. Rafiq Miya

3. Safiw Miuya

4. Riaz Miya

5. Zaimul Miya

2-5 are sons of Late Salamat Miya, resident of village Itaun, Pargana Chanan, P.S. Chanan, District Lakhisarai

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Subroteswar De

For the Respondent/s : Mr.Sunil Kumar Singh

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 01-12-2022 By order, dated 17.07.2018, passed in S.T.A. No. 02 of 2016, the amendment petition filed by the petitioner-appellant for amendment of the plaint of Title Suit No. 66 of 2009 has been rejected by learned 2nd Additional District Judge, Lakhisarai, on the ground that if the amendment is allowed, the same shall not only change the description of the suit land, but also change the nature of the suit.

The petitioner-appellant filed Title Suit No. 66 of 2009 for setting aside the sale deed, dated 24.02.2009 and for declaration that the sale deed executed by the petitioner-appellant in favour of defendant no. 1-respondent no. 1 is void,



inoperative and illegal and the same is not binding upon the petitioner-appellant.

The aforesaid title suit filed by the petitioner-appellant contains the description of land appertaining to khata no. 149, khesra no. 1025, area 21.442 decimals, bounded by “North – Salamat Miya, South – canal (*paine*), East – Shyam Paswan etc, West – Madan Thakur”. The sale deed was executed with the aforesaid boundary in favour of defendant no. 1 on 24.02.2009. The petitioner-appellant lost the suit and accordingly he filed S.T.A. No. 02 of 2016. The appeal was at the verge of conclusion and at this stage, the petitioner filed the amendment petition for adding a new sub-paragraph 5 in paragraph 19, seeking to change the boundary of the suit property sold by the petitioner-appellant by changing the north and south boundary. The boundary proposed by the petitioner-plaintiff by way of amendment in north and south is “North – Ram Sujit Yadav, South – Salamat Miya”.

Learned Counsel for the petitioner-appellant submits that during preparation of hearing of appeal, it was noticed that the amendment in relief portion is necessary for clear judgment in the appeal. Accordingly, an amendment petition has been filed for seeking amendment of the relief portion of the plaint.



He further submits that the amendment sought is formal in nature and will not change either the nature of the suit or relief prayed therein. He next submits that the learned district appellate court has come to the erroneous conclusion while rejecting the amendment petition that the plaintiff had sold some portion of land with specific boundary and, now, he wants to change it. The learned district appellate court has failed to consider the amendment petition in its correct perspective and has wrongly rejected the prayer of the petitioner.

On the other hand, learned Counsel for the respondent no. 1-defendant no. 1 submits that a piece of land was sold by the plaintiff with specific boundary and description of the property. The sale deed was challenged as the same being inoperative, illegal, void etc. He further submits that a property is identified by its boundary and the petitioner having lost the suit filed the appeal and at the verge of conclusion of the appeal, the petitioner filed an amendment petition seeking to change the entire description of the suit land with mala fide intention and in order to cause prejudice to the respondent no. 1. He further submits that the amendment sought is contradictory in nature because the plaintiff-petitioner has sought relief to set aside the sale deed, and for declaration that the sale deed, dated



24.02.2009, executed by the petitioner-appellant in favour of defendant no. 1-respondent no. 1 is void, inoperative and illegal and the same is not binding upon the petitioner-appellant, and now he prays to amend the boundary of the sold land described in the plaint with an intention to change the location of the land. He next submits that the amendment will bring a new case for adjudication as entire description of the disputed land will change.

I have heard learned Counsel for the parties concerned and have gone through the materials available on record, including the impugned order.

The petitioner filed the suit with specific description of the property mentioned in the plaint of the suit on the basis of description of the property mentioned in the sale deed, dated 24.02.2009. At the stage of the suit, no effort was made by the petitioner either to make correction in the sale deed or in the plaint regarding the incorrect boundary mentioned therein, but after the decision in the suit and filing of the appeal, the petitioner, now, wants to change the entire description of the land and boundary. The change in boundary will certainly change the identification/description of the land purchased by defendant no. 1 by way of registered sale deed, dated



24.02.2009.

I find force in the argument of learned Counsel for the respondent no. 1 that the amendment sought by the petitioner-appellant is mala fide and is contrary to the case of the petitioner as the petitioner has sought a relief for setting aside the entire sale deed as null and void and at this juncture, seeks to amend the plaint with regard to the description of the property mentioned in the same deed.

Accordingly, in my view, the amendment brought by the petitioner-appellant at the fag end of S.T.A. No. 02 of 2016 is mala fide and the proposed amendment will prejudice the case of the respondent no. 1-defendant no. 1.

In the result, this application is dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

U	✓		
---	---	--	--

