

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.707 of 2018

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Sulekha Devi W/o Chhattu Das Resident of Village - Fatehpur, P.O. Fatehpur,
Police Station - Nathnagar, District - Bhagalpur.

... .. Petitioner/s

Versus

1. Pappu Das
2. Chhedi Das Both S/o Maudagar Das Resident of Village - Fatehpur, P.O.
Fatehpur, Police Station - Nathnagar, District - Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Govind Mishra Mr.Ashutosh Kumar
For the Respondent/s	:	Mr.Mrigendra Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 8 19-12-2022 The petitioner is the plaintiff in Title Suit No. 55 of 2008. An agreement for sale was entered into between the plaintiff and the defendant no. 1 on 23.06.2008. As per the case of the plaintiff-appellant-petitioner, a notice, dated 16.07.2008, was served by the petitioner to the defendant no. 1 expressing his readiness and willingness to abide by the terms and conditions of the contract, but instead of executing the sale deed in his favour, defendant no. 1 has transferred the land in favour of defendant no. 2 on 04.08.2008, who is the own brother of defendant no. 1. The plaintiff -appellant lost the said suit by judgment and decree, dated 06.05.2011. Aggrieved by the judgment, the petitioner filed Title Appeal No. 95 of 2011. After lapse of six years, an amendment petition at appellate stage has



been filed at the belated stage by the petitioner for adding new paragraph, Paragraph No. 10A in the plaint, stating that the defendant 1st and 2nd party are own brothers and resides at village Fatehpur in the same area and the defendant 2nd party had knowledge about the agreement for sale entered into between the defendant 1st party and the plaintiff.

Learned Counsel for the petitioner, while assailing the impugned order, submits that the learned Trial Court has committed grave error in law by rejecting the petition for amendment, which is in the nature of clarification and does not prejudice and/or cause injustice to the defendants-respondents, who did not participate in the suit and did not produce any evidence.

Learned Counsel relies on a decision of the Supreme Court, in the case of **Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another**, reported in **2022 SCC ONLINE 1128**, and submits that all amendments should be allowed unless injustice is caused to the party.

On the other hand, learned Counsel for the respondents-defendants submits that by way of amendment, the petitioner is trying to fill up the lacunae in order to overcome the clear findings arrived at in the judgment/decreed passed by



the learned Trial Court, in Title Suit No. 55 of 2008. He refers one of the paragraphs of the judgment passed in Title Suit No. 55 of 2008, in which the learned Trial Court, while dismissing the suit of the petitioner, has arrived at the finding that the petitioner-plaintiff, in his plaint, has not stated that defendant 2nd party had the knowledge about the execution of the agreement for sale, dated 23.06.2008, at the time of execution of the sale deed in his favour. It has further been taken note of by the learned Trial Court, in the judgment, that the witnesses produced by the petitioner-plaintiff has also not said anything about this fact that the defendant 2nd had the knowledge about the execution of the agreement for sale between the defendant 1st party and the plaintiff at the time the sale deed being executed in his favour. The learned Trial Court has also come to the conclusion that the plaintiff has failed to prove his case that the defendant 2nd party had the knowledge about the agreement for sale prior to the execution of the sale deed in his favour.

He next submits that in view of the specific finding of the learned Trial Court, if the contrary amendment is allowed, it will certainly prejudice the case of the respondents-defendants and shall also cause injustice to him. He also submits that the petitioner has failed to show due diligence in his part inasmuch



as the suit was filed in the year 2008 and the evidence was led by the plaintiff, but no step was taken up by the plaintiff to amend the plaint at the stage of the suit and even after disposal of the suit and filing of the appeal in the year 2011, the amendment petition has been filed after six years, in the year 2017.

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

It appears that the amendment petition has been filed at the belated stage in the title appeal by which the appellant-plaintiff proposes to amend the plaint by inserting a new fact that defendant 2nd party had knowledge about the execution of agreement for sale between the defendant 1st party and the plaintiff. This amendment petition is contrary to the specific finding arrived at by the learned Trial Court in its judgment where the learned Trial Court on the basis of pleadings and the evidence produced by the plaintiff has arrived at the conclusion that the defendant 2nd party had no knowledge about the execution of agreement for sale between the defendant 1st party and the plaintiff.

For the reasons stated herein above, I am of the



opinion that the amendment petition filed by the petitioner is not bona fide and the same has been filed in order to fill up the lacunae in view of the findings arrived at by the learned Trial Court in its judgment. In my opinion, if the amendment is allowed, the same will certainly prejudice the case of the respondents and also cause injustice to them.

In the result, I do not find any reason to interfere with the impugned order.

This application is, accordingly, dismissed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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