

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.30 of 2021

1. Mati Rani Devi Wife of Late Ramakant Dubey, Resident of Village - Pakari Dhala, Post Office - D.K. Shikarpur, Police Station- Shikarpur, District - West Champaran.
2. Suman Devi, Daughter of Late Ramakant Dubey, Wife of Sri Bhushan Pandey, Resident of Village - Biswas, Post Office - Sirisia, Police Station Chanpatia (O.P. Sirisia), District - West Champaran.

... .. Petitioner/s

Versus

1. Nilam Devi Daughter of Late Ramakant Dubey, Wife of Sri Manu Shukla, Resident of Village and Post Office - Mushaharwa, Police Station- Sathi, District - West Champaran, At Present Village - Pakari Dhala, P.O. - D.K. Shikarpur, P.S. Shikarpur, District - West Champaran.
2. Asha Devi, Daughter of Late Ramakant Dubey, Wife of Sri Jawala Chubey, Resident of Village and Post Office - Mushaharwa, Police Station- Sathi, District - West Champaran.
3. Punam Devi, Daughter of Late Ramakant Dubey, Wife of Sri Jhunjhun Kumar Tiwari, Resident of Village - Jogia Tola, Post Office - Turahapatti, Police Station - Sirisia O.P., At Present - Pakri Dhala, Post Office - D.K. Shikarpur, Police Station- Shikarpur, District - West Champaran.
4. Gita Devi, Wife of Birendra Dubey, Resident of Village - Pakari Dhala, Post Office - D.K. Shikarpur, Police Station- Shikarpur, District - West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shiv Kumar Dwivedy
For the Respondent/s : Mr.Sachida Nand Rai

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

4 03-03-2022 The present civil miscellaneous application has been preferred to quash the order dated 05.10.2020, passed by the Sub Judge-III, Narkatiaganj in Partition Suit No. 266 of 2006, whereby the learned Sub Judge has allowed the petition for amendment of the plaint under Order VI, Rule 17 of the Code of Civil Procedure.



I have already heard the parties.

The plaintiff had brought above-noted partition suit for partition of her share mentioned in Schedule-II of the plaint. On 7th January, 2020, a petition was filed by the plaintiff with an averment that recently she came to know from respondent no.4 that defendant no.1 Ramakant Dubey has gifted the property in dispute to defendant no.5 Suman Devi on 22.07.2004. By amendment, the plaintiff wanted to add the relief for cancellation of that gift deed.

The amendment petition was opposed by the defendants on the ground that the said gift deed was well within the knowledge of the plaintiff since the year 2012. In the year 2012, defendant nos. 1, 2 and 3 filed their written statement. In paragraph 7 of their written statement, they have categorically pleaded that defendant nos. 1 and 2 had executed the gift deed in favour of their daughter, who is defendant no.5, on 22.07.2004. As such, that gift deed was in the knowledge of the plaintiff and she has deliberately and wilfully filed the petition under Order VI, Rule 17 of the Code of Civil Procedure at much belated stage only in order to delay the proceeding of the suit. It has wrongly been mentioned that she came to to know about the existence of the gift deed from defendant no.4.



From perusal of the impugned order, it appears that the learned trial court has mentioned specifically that if the petition is allowed, the nature of the suit shall be changed. Despite that specific finding, the learned Sub Judge, allowed the amendment petition at the cost of Rs. 2000/- mentioning that for the ends of justice it was done.

The provision of Order VI, rule 17 reads as follows:-

“17. Amendment of pleadings.-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

From perusal of the proviso of Order VI, Rule 17 of the Code of Civil Procedure, it is clear that there is an embargo on entertaining of the amendment petition after the trial has commenced, unless the Court comes to the conclusion that in



spite of due diligence, the party could not have raised the matter before the commencement of trial.

The written statement was filed on behalf of defendant nos 1, 2 and 3 as back as in the year 2012. In paragraph no.7 thereof, the gift deed dated 22.07.2004 has specifically been mentioned, as such, it cannot be assumed that despite due diligence, the plaintiff could not file petition before the commencement of trial or even afterwards within a reasonable time. Moreover, the impugned order itself shows that the amendment petition has been filed after the conclusion of the final argument of both the parties.

On the basis of above-mentioned observation, the order dated 05.10.2020, passed by the Sub Judge-III, Narkatiaganj is hereby quashed. Accordingly, this civil miscellaneous petition is allowed.

(Nawneet Kumar Pandey, J)

HR/-

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