

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1708 of 2018

Ramvinod Pandey @ Vinod Pandey S/o Late Dev Narayan Pandey Vill.-
Salkhua, P.S.- Amnaur, Distt.- Saran

... .. Petitioner

Versus

1. Nagendra Tiwary S/o Late Daroga Pandey R/o Mauza- Salkhua, P.S.-
Amnaur, Distt.- Saran
2. Kalpi Kuar W/o Late Nagendra Pandey Vill.- Salkhua, P.S.- Amnaur, Distt.-
Saran
3. Vikash Kumar (minor) S/o Late Nagendra Pandey Vill.- Salkhua, P.S.-
Amnaur, Distt.- Saran
4. Vishal Kumar (minor) S/o Late Nagendra Pandey Vill.- Salkhua, P.S.-
Amnaur, Distt.- Saran
5. Babita Kumari (minor) D/o Late Nagendra Pandey Vill.- Salkhua, P.S.-
Amnaur, Distt.- Saran
6. Yamuna Pandey S/o Late Deo Narayan Pandey Vill.- Salkhua, P.S.- Amnaur,
Distt.- Saran
7. Punam Kuar W/o Late Satyadeo Pandey Vill.- Salkhua, P.S.- Amnaur, Distt.-
Saran
8. Krishna Pandey S/o Late Satyadeo Pandey Vill.- Salkhua, P.S.- Amnaur,
Distt.- Saran
9. Sweta Kumari (minor) D/o Late Satyadeo Pandey Vill.- Salkhua, P.S.-
Amnaur, Distt.- Saran
10. Hari Pandey S/o Late Deo Narayan Pandey Vill.- Salkhua, P.S.- Amnaur,
Distt.- Saran
11. Lilawati Devi W/o Ashok Pandey D/o Late Deo Narayan Pandey, Vill.-
Kohramuzwana, P.s.- Parsa, Distt.- Saran at present residing in Vill.-
Salkhua, P.S.- Amnaur, Distt.- Saran
12. Saraswati Devi W/o Prakash Singh D/o Late Deo Narayan Pandey, Vill.-
Deo Bahuara, P.o.- Bahuara, P.S.- Marhaurah, Distt.- Saran, Bihar at present
residing in Vill.- Salkhua, P.S.- Amnaur, Distt.- Saran

... .. Respondents

Appearance :

For the Petitioner/s	:	Ms. Prakritita Sharma, Advocate Mr. Krishna Chandra, Advocate
For the Respondent-1st set:		Mr. Anirudh Kumar Verma., Advocate Mr. Vyas Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 20-06-2024

Heard learned counsel for the petitioner as well as



learned counsel for the respondent-1st set on the point of admission and I intend to dispose of this petition at the stage of admission itself.

02. The instant petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 20.08.2018 passed by the learned Sub Judge-X, Chapra in Title Suit No. 408 of 2007 allowing the amendment petition dated 04.12.2017 filed by the plaintiff under Order-VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code').

03. Learned counsel for the petitioner submits that respondent no. 1 is the plaintiff before the learned trial court and he filed a title suit bearing Title Suit No. 408 of 2007 seeking following relief(s):-

“2. (i) To declare the right title and interest of the plaintiffs over the land of schedule no. 2 with further declaration that the defendants 1st set has not right and title over the same.

(ii) To confirm the title and possession of the plaintiff over the land in suit.

iii. To grant the decree of permanent injunction restraining the defendant no. 1 (petitioner) permanently from interfering into the possession of the plaintiff.

iv. To decree the suit with cost.



v. To grant any other relief or reliefs to which the plaintiff is found entitled for.”

During pendency of the title suit, the plaintiff filed a petition dated 04.12.2017 under Order 6 Rule 17 of the Code for adding new relief to set aside the sale deed dated 27.09.1995 executed by Sipahi Thakur in favour of mother of respondent nos. 10 to 12. Learned counsel further submits that the contention of the plaintiff is that when the plaint was filed, he has no knowledge about the aforesaid sale-deed. However, this fact has been mentioned by the petitioner, who is defendant before the learned trial court, in paragraph 25 of his written statement, which was filed on 02.01.2008. Thereafter, without assigning any reason and without showing any due diligence, the plaintiff filed a petition on 04.12.2017 for adding the relief to set aside the sale deed dated 27.09.1995. The learned trial court has, without taking into consideration the fact that despite having knowledge about the sale deed the plaintiff did not bring the amendment within the period of limitation, allowed the said amendment. No where it has been mentioned or any averment has been made on behalf of the plaintiff that he has no knowledge about the filing of the written statement and its contents. The learned trial court also failed to appreciate the fact



that Article 59 of the Limitation Act bars the relief which has been sought after expiry of three years from the date when the facts entitling the plaintiff to have the said relief first became known to him. Learned counsel further referred to the decision of learned Single Judge of this Court in the case of ***Imtyaz Ahmad Vs. Mohamad Mustafa (Civil Misc. Jurisdiction No. 566 of 2016, decided on 08.04.2017)*** reported in ***2017(3) BLJ 207***, wherein it has been held that such amendment is barred by limitation and if the amendment which is demonstrably barred by limitation is allowed then again the scope for prayer for rejection of the plaint under Order, Rule 11(d) with regard to such relief will remain, resulting in elongation of the proceeding. On this point, learned Single Judge relied on the decision of Hon'ble Apex Court in the case of ***L.C. Hanumanthappa Vs. H. B. Shivakumar***, reported in ***(2016) 1 SCC 332***. Learned counsel further submits that since the trial has commenced, allowing the amendment is against the specific provision of Order 6 Rule 17 of the Code as proviso says 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. The plaintiff has failed to



make out any case for allowing the amendment. Thus, the learned counsel submits that the impugned order is not sustainable and the same be set aside.

04. On the other hand, learned counsel appearing on behalf of respondent-1st set vehemently contends that the amendment could be allowed at any stage of trial, if the same is necessary for the purpose of determining the real questions in controversy between the parties. Learned counsel further submits that amendment is also necessary for avoiding the multiplicity of litigation. Since it has come in the written statement that a fraudulent sale deed has been made the basis for the claim of the defendants, the plaintiff is within his right to challenge the same and unless the amendment is allowed, the plaintiff would be compelled to enter into further litigation. Learned counsel reiterates that it has been decided in a number of cases that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. Learned counsel for the petitioner further submits that the learned trial court has not committed any irregularity in passing the impugned order and the same needs to be sustained and the present petition is liable to be dismissed.



05. Perused the record.

06. I have considered the rival submission of the parties as well as facts and circumstances of the case. After filing of the suit, a written statement came to be filed on 02.01.2008 wherein the defendant/petitioner brought to the notice of the Court and the plaintiffs the fact about execution of sale-deed by one Sipahi Thakur in favour of mother of respondent nos. 10 to 12. Perusal of such petition filed under Order-VI, Rule-17 shows no reason has been mentioned why the amendment petition has not been filed earlier specifically within the period of limitation, as the amendment petition has been filed after 11 years and there is no satisfactory explanation for the same. It has also come during the arguments that the matter was running at the stage of evidence when the amendment petition was filed. For this reason, evidently there is no due diligence. Now, the plaintiff once came to know about execution of the sale-deed after filing of the written statement, he ought to have taken steps within the period of limitation, which has been prescribed under Article 59 of the Limitation Act and the same was to be treated from the date when this fact first came to the knowledge of the plaintiffs. Moreover, allowing the amendment to the plaintiffs to challenge the sale



deed, is, in fact, allowing a time barred relief, which is against the provisions prescribed under Article 59 of the Limitation Act.

07. In the aforesaid facts and circumstances, I am of the view that the facts of the present case are almost similar to the case of *Imtyaz Ahmad Vs. Mohamad Mustafa* (supra) and hence, the ratio of the case is squarely applicable to the facts of present case and also the principle of law as laid down in the case of *L.C. Hanumanthappa* (supra). For this reason, this Court does not find any merit in the submission made on behalf respondents. Hence, the impugned order dated 20.08.2018 passed by the learned Sub Judge-X, Chapra in Title Suit No. 408 of 2007 is set aside. In the result, the amendment petition dated 04.12.2017 filed by the plaintiff under Order-VI Rule 17 of the Code is dismissed.

08. Accordingly, the present Civil Misc. Petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.06.2024
Transmission Date	NA

