

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1445 of 2017

1. Amal Yadav, Son of Late Nageshwar Yadav,
2. Madhu Devi,
3. Vibha Devi,
4. Rubi Devi, All Daughters of Late Nageshwar Yadav,
5. Bhulan Choudhary,
6. Krishna Mohan Choudhary,
7. Shiv Chandra Choudhary,
8. Gopi Choudhary, All sons of Late Awadh Choudhary,
9. Most. Manju Devi, wife of Late Ram Chandra Choudhary (Daughter in law of Late Awadh Choudhary)
10. Manjula Devi, Daughter of Late Awadh Choudhary, All resident of Village- Charrapatti, P.S.- Kumarkhand, District- Madhepura.

... .. Petitioner/s

Versus

1. Shafali Singh,
2. Ashok Singh,
3. Sukhu Singh,
4. Surya Singh, All sons of Late Nageshwar Singh,
5. Anima Singh,
6. Lila Singh,
7. Lalita Singh,
8. Jumma Singh @ Julmi Singh, All Daughters of Late Nageshwar Singh,
9. Pramod Kumar Singh,
10. Maulendra Kumar Singh,
11. Anmol Singh,
12. Sushil Singh, All sons of Late Kusheshwar Singh, Respondents nos. 1 to 12 all are resident of Sukhasan, P.S.- Kumarkhand, District- Madhepura.
13. Rajdeep Kumar,
14. Ravi Shankar Kumar, Both sons of Late Ram Chandra Choudhary (grand sons of Late Awadh Choudhary),
15. Dolly Kumar, daughter of Late Ram Chandra Choudhary (grand daughter of Late Awath Choudhary),
16. Mandula Devi, daughter of Late Awadh Choudhary, All resident of Charrapatti, P.S.- Kumarkhand, District- Madhepura.

... .. Respondent/s

Appearance :



For the Petitioner/s : Mr.Ashok Kumar Sinha No.-2, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 03-12-2024

Heard learned counsel for the petitioners and I intend to dispose of the petition at the stage of admission itself.

2. The petitioners are aggrieved by order dated 04.05.2017 passed by learned Munsif-cum-Civil Judge, Junior Division, Madhepura in Title Suit No. 11 of 1997 whereby and whereunder certain amendments sought by the plaintiff/petitioners have been disallowed.

3. Learned counsel for the petitioners submits that the plaintiff/petitioners filed a Suit for specific performance of contract seeking direction to defendant no. 1 to execute the sale deed as per agreement for sale dated 30.09.1995 after taking the balance amount of the consideration money. Originally, the suit was filed by Nageshwar Yadav plaintiff no. 1 and Awadh Choudhary plaintiff no. 2 against Nageshwar Singh as the sole defendant. Subsequently, defendant nos. 2 to 5 who are respondent nos. 9 to 12 appeared in the case as intervenors and their impleadment was allowed and these, defendants filed their written statement on 17.01.2000. Subsequently, the original plaintiffs died and their legal heirs were substituted and the



original defendant also died and his legal heirs were substituted who are respondent nos. 1-8. Learned counsel further submits that after death of original defendant the suit abated. However, on appeal it was allowed on 17.08.2012 and again the suit proceeded. Learned counsel further submits that specific statements have been made in the written statement of the intervenors/defendants regarding agreement to sale dated 30.09.1995 executed by the original defendant Nageshwar Singh. This necessitated bringing the amendment by the plaintiff in order to clarify the averment made by the intervenors/defendants in their written statement. On these grounds, plaintiffs/petitioners filed an application for amendment and a rejoinder was filed by the intervenors/defendants who objected to the amendments sought by the petitioners. The amendment application was partially allowed and the learned trial court rejected some amendments sought by the petitioners which has been challenged before this Court.

4. Learned counsel further submits that the order rejecting vital parts of the amendment is illegal and arbitrary. The learned trial court held that there was possibility that the amendment may change the nature of the suit though, it could



not be said with certainty that the nature of the suit was going to be changed after the amendment. Learned counsel further submits that the proposed amendments do not change the nature of the suit and rejection of the amendment on this ground was arbitrary and illegal.

5. Perused the record.

6. Admittedly, the suit of the plaintiffs/petitioners is for specific performance of contract. On the basis of agreement to sale dated 30.09.1995, the plaintiffs/petitioners have filed the suit for its specific performance. It also appears that the intervenors defendants are the purchasers of the suit land from the original defendants. Now, the amendments which have been rejected by the learned trial court wants to introduce certain facts about the intervenors/defendants about they being present at the time of execution of the agreement of sale between the original plaintiffs and the defendants. It has also been sought to be brought on record that the intervenors were supposed to act as witnesses on the agreement to sale but they refused making excuses. It has further been stated in the amendment petition that the intervenors were having all knowledge about the earlier agreement of sale. Further, it has been claimed that the sale deed executed by the original defendant in favour of the



intervenors/defendants was a fraudulent document and their document was not *bona fide* and they were not subsequent purchasers for value without previous knowledge of agreement of sale and their document was forged, fraudulent, sham and *mala fide* and they never came into possession. Thus declaration was also sought against the sale deed of intervenors/defendants respondents.

7. Apparently, the introduction of such averment would convert the suit for specific performance to a suit for declaration against the sale deed of the intervenors, a relief which was not earlier sought. Similarly, the other amendment which has been disallowed is with regard to the same averment as in previous amendment which has been disallowed and is about seeking relief for setting aside the sale deed is executed in the favour of the intervenors/defendants. Time line of the amendment petition is also important. Intervenors appeared and filed written statement in the year 2000 and the amendment has been sought in the year 2014. Though, it has come in the submission that after death of original defendant the Title Suit abated and it was restored after the orders in appeal but the same would not take out the impact of belated filing of the amendment petition.



8. Therefore, on these two grounds i.e., the amendment changing the nature of the suit and the deliberate delay to incorporate the facts through amendments which were in the knowledge of the plaintiffs from the very beginning, I do not find any infirmity in the impugned order and hence, the same is sustained.

9. Accordingly, the present petition is dismissed being devoid of any merit.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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