

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.131 of 2024

Ram Pyare Pandey @ Dinesh Pandey Son of Late dev Sharan Pandey,
Resident of Village- Malda, Post Office- D.K. Shikarpur, Police Station-
Shikarpur, District- West Champaran.

... .. Petitioner/s

Versus

1. Barababu Pandey Son of Late Ram Chandra Pandey, Resident of Village- Malda, Post Office- D.K. Shikarpur, Police Station- Shikarpur, District- West Champaran.
2. Anil Pandey Son of Shri Ram Pyare Pandey, Resident of Village- Malda, Post Office- D.K. Shikarpur, Police Station- Shikarpur, District- West Champaran.
3. Smt. Hridya Devi Wife of Birendra Tiwary, Resident of Village- Bhasuarari, Post Office- Rajpur, Police Station- Shikarpur, District - West Champaran.
4. Bandhan Devi, Wife of Late Sanjay Pandey, Resident of Village and Post Office- Danmarwa, Police Station- Ramnagar, District- West Champaran.
5. Smt. Neebha Devi, Wife of Jhunjhun Pathak, Resident of Village and Post Office- Chhota Kipatti, Police Station- Bagaha, District- West Champaran.
6. Smt. Mantu Devi, Wife of Sanjay Chaubey, Resident of Village and Post Office- Kehuniya, Police Station- Shikarpur, District- West Champaran.
7. Smt. Guddi Devi, Wife of Ajay Tiwary, Resident of Village- Parsoni, Post Office- Sathi, District- West Champaran.
8. Chandan Mishra, Son of Late Ambu Mishra, Resident of Village- Amolawa Pakari, Post Office- Pakri, Police Station- Gounaha, District- West Champaran at present Resident of Village- Malda, Police Station- Shikarpur, District- West Champaran.
9. Dholi Devi, Wife of Tudu Upadhyay, Resident of Village- Sauchhap, Post Office- Gobrorra, Police Station- Lauriya, District- West Champaran.
10. Ramjet Prasad, son of Ramashish Prasad, Resident of Village- Shikarpur, Ward No. 12, Post Office- Narkatiaganj, Police Station- Shikarpur, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Milind Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Shiv Kumar Dwivedy, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 17-04-2025

Heard learned counsel for the parties.

2. The petitioner is aggrieved by the order dated



15.12.2023 passed by the learned Sub Judge-1st, Narkatiaganj in Partition Suit No. 87 of 2019 whereby and whereunder the application filed by the plaintiff/respondent 1st set seeking amendment in the plaint has been allowed.

3. Learned counsel for the petitioner submits that the petitioner is the defendant in the partition suit which has been filed by the respondent 1st set seeking partition of property described in Schedule-4 of the plaint by carving out ½ share of the plaintiff and also for appointing Survey Knowing Commissioner for separating the *takhta*. After receipt of notice, the defendants appeared and filed their written statement denying the claim of the plaintiff. During pendency of the suit, plaintiff filed a petition on 13.12.2022 under Order VI Rule 17 of the Code of Civil Procedure (for short 'the Code') praying to make certain amendments in the plaint. Learned counsel further submits that four amendments have been proposed and the said amendments change the nature of the suit but this fact was not taken into consideration by the learned trial court which allowed the amendment application. Learned counsel further submits that the plaintiff has deliberately left out making his sister Kamlawati Devi party in the suit and has challenged a gift deed dated 30.06.1980 executed by Mostt. Lakhraji Kuar in favour of



Kamlawati Devi to be illegal, forged, fraudulent and void document. Similarly, the plaintiff has not given any basis for making certain changes in the plot numbers. Further, the learned trial court has not taken into consideration the fact that if the amendment is allowed, the plaintiff would be required to value the suit for an amount of Rs. 16,00,000/- and pay the court fee. Learned counsel further submits that the plaintiff has been trying to introduce by way of proposed amendment a time barred claim. Since the plaintiff has all along been knowing about execution of gift in the year 1980 and still he did not choose to challenge the same within the limitation period of three years. Rather he has challenged the said gift deed after 42 years of its execution and under Article 58 of the Limitation Act, the said gift deed could not be challenged as it is way beyond the period of limitation. Thus, the learned counsel submits that the impugned order is not sustainable and the same be set aside.

4. Learned counsel appearing on behalf of respondents submits that there is no illegality in the impugned order. The amendments have been proposed at the initial stage and trial has not commenced in the partition suit. Due to inadvertence and wrong advice, the plaintiff did not make his sister party in the case and relief against a fraudulent gift deed



could not be sought. Learned counsel further submits that since the document is forged and fabricated and void document, it was not necessary to seek formal relief of declaration against it. But as the plaintiff has filed the suit, relief for declaration of the said document as null and void has been sought. Learned counsel reiterates that the suit is still at initial stage and such relief should be taken as being part of the plaint from the very beginning. Learned counsel further submits that some of the plot numbers have been wrongly mentioned and these amendments are completely formal in nature and would not make any change in the nature of the suit or the jurisdiction of the court. If the amendments are not allowed, the plaintiff would suffer irreparable loss.

5. I have given my thoughtful consideration to the rival submission of the parties. Since the suit is still at its nascent stage and trial is yet to commence, Order VI Rule 17 of the Code provides that all amendments shall be allowed which are necessary for determination of real controversy between the parties. So far as the submission of learned counsel for the petitioner about a time barred claim being introduced through the amendment is concerned, the same could be considered during the trial and rejecting the amendment *in limine* would not



serve the purpose of justice. Other amendments, apparently, are quite formal in nature. Therefore, I do not find any infirmity in the impugned order dated 15.12.2023 passed by the learned Sub Judge-1st, Narkatiaganj in Partition Suit No. 87 of 2019 and, hence, the same is affirmed.

6. However, the defendants are at liberty to file amended written statement/additional written statement in the light of amendments made by the plaintiff in his plaint.

7. Accordingly, the present petition stands disposed of.

(Arun Kumar Jha, J)

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