
(1998) 03 PAT CK 0051

In the Patna High Court

Case No : Civil Revision No. 404 of 1997 (R)

Anand Prasad Sao @ Anand Sao and Another

APPELLANT

Vs

Satya Narayan Prasad and Others

RESPONDENT

Date of Decision : 05-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1998) 2 PLJR 631

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : G.N. Lal, for the Appellant; P.C. Roy, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This civil revision application is directed against the order dated 25.09.1997 passed by the Sub Judge-I, at Chaibasa in Title (Partition) Suit No. 16 of 1988 whereby and whereunder the learned court below allowed the petition filed by the plaintiff opposite party seeking amendment of the plaint. The plaintiff opposite party filed the aforesaid suit claiming partition of the properties mentioned in the plaint. In the said partition suit, these petitioners and opposite party No. 2 were made contesting defendants and opposite parties No. 3 and 4 were made proforma defendants. Defendant petitioner No. 1 filed his written statement and contested the suit stating, inter alia, that item No. 1 of the suit property i.e. land and house bearing plot No. 174 situated in ward No. 1 in Chakradharpur was sold by Ram Jeevan Sao for a valuation consideration by virtue of registered deed of sale dated 27.4.1977 to the petitioner No. 2 and a specific plea was taken that the suit property was the self-acquired property of the vendor Ram Jeevan Sao out of his own fund. In a separate written statement filed by the petitioner No. 2 who is wife of petitioner No. 1, the said fact was specifically pleaded that she purchased the aforementioned property along with other properties for a valuable consideration from the said Ram Jeevan Sao and the possession of the property was also delivered to her. It was also stated that

her name was mutated in the Serista of the State. It was also pleaded by defendant petitioner that the plaintiff was fully aware of the aforesaid sale deed dated 27.4.77 executed in favour of petitioner No. 2.

2. It appears that on 6.9.97, the plaintiff opposite party filed a petition under Order 6, Rule 17 of the CPC for amendment of the plaint seeking declaration that the sale deed dated 27.4.77 executed by Ram Jeevan Sao in favour of the defendant No. 2 is null and void and has conveyed no right, title or interest in favour of the transferee. The said petition was opposed to by the defendant-petitioner by filing a rejoinder taking the specific stand that the amendment sought for is barred by limitation and a right has accrued to petitioner No. 2 which would not be defeated by allowing the amendment of the plaint. The learned court below after hearing the parties allowed the said petition by the impugned order.

3. I have heard Mr. S. N. Lal, counsel for the petitioners and Mr. P.C. Roy, learned counsel for the plaintiff opp. party. Mr. Lal relying on two decisions of the Apex Court in the case of K. Raheja Construction Ltd. vs. Alliance [1996(2) BC 152 (SC)] and in the case of Radhika Devi Vs. Bajrangi Singh and others, submitted that the court below has committed a grave error of law in allowing the amendment of the plaint. The learned counsel submitted that the plaintiff was aware of the execution of the sale deed in the year 1977 and, therefore, it cannot be said that due to inadvertence, relief was not claimed in the suit. I find force in the submission of Mr. Lal. From the plaint itself, it is clear that the plaintiff opposite party was aware about the execution of the sale deed by Ram Jeevan Sao in the year 1977, but no relief was claimed in the suit filed in 1988. Even after filing of the written statement, no such prayer was made for about nine years after (sic) of execution of the suit, and for the first time in the year 1997, such petition for amendment of the plaint was filed. In the facts and circumstances of the case, I find that the principles laid down by the Apex Court in the decisions referred to above fully apply and the petition for amendment is liable to be rejected. Mr. P.C. Roy, learned counsel appearing on behalf of the plaintiff opposite party submitted that under Article 109 of the Limitation Act, 1963, the limitation provided for setting aside a sale is twelve years and the period begins to run from the date when the transferee takes possession of the property. According to the learned counsel, therefore, the plaintiff is still in possession and therefore the amendment petition is well within time. I am not able to accept the submission made by the learned counsel. It is the, specific case of the defendant petitioner that after the property in question was transferred in the year 1977, the transferee namely petitioner No. 2 came in possession of the property and got her name mutated and has been paying all rents and taxes in her name. From the amendment petition also, it does not appear that the plaintiff opposite party made out a case that the plaintiff is in possession of the land and house which was sold to petitioner No. 2 in the year 1977. The learned court below erred in law in holding that the relief sought for by the proposed amendment is not barred by limitation.

Having regard to the facts and circumstances of the case and the discussions made above, this Civil Revision application Is allowed and the impugned order passed by the court below is set aside. Accordingly, the petition for proposed amendment filed by the plaintiff opposite party is rejected.