

(2007) 02 PAT CK 0046

In the Patna High Court

Case No : C.R. No. 227 of 2006 with I.A. No. 4497 of 2006

Majistar Choudhary and Others

APPELLANT

Vs

Jitu Choudhary and Others

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Citation : (2007) 2 PLJR 831

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Advocate : Deen Bandhu Singh, for the Appellant; Chandra Kant, for the Respondent

Judgement

Ramesh Kr. Datta, J.

I.A. No. 4497 of 2006

1. This interlocutory application has been filed for substituting the heirs of deceased opposite party no. 11, Gutani Choudhary who died on 23.7.2006 and also the deceased opposite party 19 Harishankar Choudhary who died on 16.8.2006 during the pendency of this civil revision application. After hearing learned counsel for the parties, it is directed that the name of opposite party no. 11, Gutani Choudhary and opposite party no. 19, Harishankar Choudhary shall be expunged and in their places their heirs and legal representatives as stated in paragraph nos. 2 and 3 of the application are directed to be substituted.

2. I.A. No. 4497 of 2006 is accordingly allowed.

3. On merit, heard Mr. Deen Bandhu Singh, learned counsel for the petitioners and Mr. Chandra Kant, learned counsel for the opposite party no.1.

4. The petitioners have filed this application against the order dated 16.12.2005 passed by Sub-Judge-I, Siwan in Title Suit No. 164/1997 by which he has allowed the amendment sought by the plaintiffs under Order 6 Rule 17 read with

Section 151 of the Code of Civil Procedure.

5. The aforesaid suit had been filed by the plaintiff-opposite party no. 1 as a partition suit for separation of his share from the suit properties and a prayer was also made for issuance of temporary injunction against the defendants restraining them from alienating or changing the nature of the property during the pendency of the suit. The defendant 1st set-petitioners appeared in the case and filed their written statement on 12.7.2001. It is stated that in the said written statement specific reference had been made to a gift deed dated 11.9.1995 executed by one Bira Choudhary and Akali Devi in favour of the defendant-petitioners. This was not challenged by the plaintiffs. But subsequently on 8.4.2005 the present amendment petition was filed under Order 6 Rule 17 of the CPC for amending the plaint by including the challenge to the said gift deed as not having been executed by said Bira Choudhary or Akali Devi and the same being forged, fabricated and wrongly executed through impersonation. The said application by the plaintiffs for amendment was objected to by the defendant-petitioners in which a clear stand taken was that apart from changing the nature of the suit the said amendment is also barred by limitation being more than three years beyond the date on which the said facts had been brought to the notice of the plaintiffs by making an averment in the written statement.

6. Learned counsel for the petitioners submitted that in view of the aforesaid facts and the belated filing of the petition for amendment beyond the period of limitation the said amendment petition ought not to have been allowed by the court below as has been done by the impugned order dated 16.12.2005. In support of his stand learned counsel relies upon a decision of the Supreme Court in the case of Ragu Thilak D. John vs. S. Rayappan and Ors., (2001)2 SCC 472.

7. Learned counsel for the plaintiff-opposite party on the other hand, submits that the court below has rightly allowed the said amendment petition as it is the settled law that all the issues which are necessary for the decision of the case should be considered and decided by the court and for the said purposes no technical plea should be permitted to be upheld against amendment petition. It is further submitted by the learned counsel that the plaintiff-opposite party no. 1 had clearly stated the fact in the amendment petition (Annexure-1) that one of the defendants Biku Choudhary in his written statement filed on 28.12.2004 had produced certain documents in support of the same, one of which is a gift deed executed by Bira Choudhary and his wife and after learning about the same the plaintiffs filed the amendment petition. It is submitted that in view of the said fact and the plaintiffs having seen the alleged gift deed for the first time on 28.12.2004 he had immediately taken steps for amendment within the period of limitation and the amendment petition has rightly been allowed on payment of cost. In support of his stand, learned counsel relies upon a decision of the Supreme Court in the case of Rajesh Kumar Agrawal & Ors. vs. K.K. Modi & Ors. : 2006(2) BBCJ IV-451.

8. So far as the reliance of learned counsel for the petitioner on the Ragu Thilak

D. John's case is concerned, the same appears to be misconceived because in the said decision while referring to the earlier cases decided by it on the point the Supreme Court has clearly held that while the amendment could not be claimed as a matter of right and under all circumstances, but it is equally proper that the court while deciding such prayers should not adopt hyper-technical approach. In the said matter it was further held by the Court on the basis of facts involved that an arguable issue has been raised therein that the relief sought by the amendment was barred by limitation and it was accordingly ordered by the Court that in the said circumstances, the plea of limitation being disputed, could be made subject-matter of the issue after allowing the amendment prayed for. In Rajesh Kumar Agrawal's case also similar view has been expressed by the Apex Court that the court should try the merits of the case that come before them and should consequently allow all amendments that would be necessary for determining the real question of controversy between the parties provided it does not cause injustice or prejudice to the other side.

9. Thus, on a consideration of the law laid down by the Supreme Court on this point. I am of the view that there is no infirmity in the impugned order dated 16.12.2005 while allowing the amendment as prayed for by the plaintiffs. However, since the question of limitation to the challenge of the deed of gift has been raised by the defendant-petitioners which is being contested by the plaintiff-opposite party no. 1, the said issue must also be considered by the court below while considering the issue regarding genuineness or otherwise of the gift deed in question. In the result, this civil revision application is disposed of with the aforesaid observations.