
(1998) 11 PAT CK 0081

In the Patna High Court

Case No : Civil Revision No's. 1197 and 1252 of 1998

Ragho Pandey and Others

APPELLANT

Vs

Rajendra Tiwary

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Citation : (1999) 1 PLJR 157

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

Bench : Single Bench

Advocate : S.S. Dwivedi, for the Appellant; Rakesh Kumar Srivastava, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—These two civil revision applications arise out of common order dated 12.6.98 passed by 1st Subordinate Judge, Siwan in Title Suit No. 225/96. Civil Revision No. 1197/98 is directed against that part of the order whereby Plaintiff's prayer for amendment of the plaint was refused. Civil Revision No. 1252 of 1988 is directed against that part of the order whereby prayer of the Plaintiff to admit into evidence the death certificate of Baban Tiwary has been rejected. These two civil revision applications are being disposed of by this common order.

2. The Plaintiff Petitioner filed title suit No. 225/96 for declaration of their title and for declaration that ex parte decree passed in title suit No. 42/89 of the said Court was illegal, fraudulent, non-est in the eye of law and not binding on the Plaintiffs and further the sale deed dated 7.9.96 executed in favour of the Defendants on the basis of the said decree is also void and illegal. The Plaintiff's case, inter alia, is that the disputed lands originally belonged to Baban Tiwary who has only two daughters namely Petitioners No. 4 and 5. Plaintiffs Petitioner No. 1 and 2 are his sons-in-law and Plaintiff Petitioner No. 6 is his widow. It is alleged that out of love and affection the said Baban. Tiwary gifted 3 Bighas, 6 Kathas and 11 dhurs of land in favour of Plaintiff Nos. 1 to 3 by virtue of

registered deed of gift on the same day regarding 17 kathas and 8 dhurs of lands in favour of Plaintiff No. 3 and put them in possession of the said property. Baban Tiwary died joint with the Plaintiff and they have dealt with the properties as and when the occasion arose. The Plaintiffs further case is that on 8.8.96 Petitioners came to learn that the Defendant had got a sale deed prepared through Court regarding the entire disputed properties, belonging to the Plaintiffs and he had filed execution case No. 2/93 and was taking steps for getting their properties auction sold. The Plaintiffs got the record inspected by their counsel on the same day and they learnt that opposite party had filed title suit No. 42/89 for Specific Performance of Contract on the basis of forged and fabricated Mahadanama purported to have been executed by late Baban Tiwary. It is alleged that in that suit Plaintiffs got all the process concealed from the Defendants and got Bala-bala service and the suit decreed ex parte. The Plaintiffs case in the suit is that Plaintiff Nos. 4 to 6 are ladies, plaintiffs No. 3 was minor and Plaintiff Nos. 1 and 2 were inexperienced persons and as such while instructing their counsel they did not instruct their counsel regarding the date of death of Baban Tiwary which took place on 30.11.89 at Balrampur in Uttar Pradesh. When the suit was taken up for hearing and the Plaintiffs started leading evidence in support of their case the Defendant cross examined the Plaintiff No. 2 who was examined as P.W. 9 and during cross-examination the Defendants would get the date of death of Baban Tiwary as 30.11.89 Since the factum of date of death and place of death of Baban Tiwary was not pleaded in the plaint, a petition for amendment of the plaint was filed by the Plaintiff Petitioner. A separate application was also filed for adducing evidence regarding the death certificate of Baban Tiwary. The Defendants opposed the said application by filing rejoinder. The Court below after hearing the parties rejected both the petitions of the Petitioners Plaintiff by the impugned order.

3. I have heard Mr. S.S. Dwivedi learned senior counsel appearing for the Petitioner and Mr. Rakesh Kumar Srivastava, learned Counsel appearing for the opposite party and I have also gone through the impugned order passed by the Court below. The main ground for rejection of the prayer for amendment of the plaint by the Court below was that nowhere in the plaint it was mentioned that Baban Tiwary was dead when the judgment and decree was passed in title suit No. 42/89. The Court below further held that after procuring the death certificate of Baban Tiwary the Plaintiff had come with a new case that judgment and decree passed in the aforesaid suit was against a dead person. According to the Court below the amendment sought for is a new plea which is inconsistent with the case disclosed in the plaint. In my opinion the Court below has not correctly appreciated the law with regard to the amendment of the pleading. The Court below may be right that the fact sought to be added that Baban Tiwary died on 23.4.98 was not mentioned in the plaint but the Court below lost sight of the fact that was the reason, the Plaintiff wanted to add this fact in the plaint as it was not found place in the original plaint. This fact, in my opinion, will not change the nature and character of the suit inasmuch as the relief claimed in the suit will

remain the same. Further the Court below has committed error of jurisdiction in rejecting the prayer of the Plaintiff for adducing death certificate into evidence. It is well settled that merely because amendment of the pleading is allowed, it will not amount to admission of fact by the parties. It is equally well settled that admission of document into evidence will not amount to accepting the genuineness of the same. Even if amendment is allowed and the death certificate is adduced into evidence the Defendants shall have every right to file additional written statement and lead evidence with regard to the correctness of the facts amended and the genuineness of the death certificate so produced by the Defendants. For that reason the Court ought not to have disallowed the prayer made by the Plaintiffs.

4. For the reasons aforesaid both these civil revision applications are allowed and the impugned order passed by the Court below is set aside.