

(1998) 02 PAT CK 0006
In the Patna High Court
Case No : Civil Revision No. 1838 of 1997

Rajmati Devi and others

APPELLANT

Vs

Ram Pravesh Roy and Others

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Specific Relief Act, 1963 — Section 34

Citation : (1998) 2 PLJR 70

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

Bench : Single Bench

Advocate : Sukumar Sinha, for the Appellant; Girish Nandan Singh, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This Civil Revision application is directed against the order dated 27.9.1997 passed by the VIth Additional District Judge, Siwan, in Title Appeal No. 7 of 1993 by which the prayer made by the plaintiff-appellants for amendment of the plaint was refused. The plaintiff-petitioners filed the aforesaid suit for declaration of title on adjudication that six sale-deeds dated 30.9.1985 and 3.1.1986 executed by Defendant No. 1 in favour of Defendants No. 2 to 4 are forged, fabricated and without consideration and the sale-deeds are ineffective and in-operative and not binding on the plaintiffs. The suit was contested by the defendants by filing written statement. The learned trial court dismissed the suit in terms of the judgment dated 17.11.1992. The plaintiff-petitioners preferred an appeal before the District Judge, Siwan, being Title Appeal No. 7 of 1993 which was eventually transferred to the court of VIth Additional District Judge. The plaintiff-appellants, during the pendency of the appeal, filed an application under Order VI, rule 17 C. P. C. seeking certain amendment in the plaint. The said prayer was opposed by the respondents by filing rejoinder. The learned court below rejected the prayer by the impugned order.

2. The learned counsel appearing on behalf of the petitioners has assailed the

impugned order as being illegal and wholly without jurisdiction. The learned counsel for the petitioner submitted that the court below has committed grave error of law in rejecting the application of the petitioners for amendment of the plaint. The learned counsel submitted that the proposed amendment will neither change the nature and character of the suit nor in any way need a fresh trial. Learned counsel has further submitted that the prayer for recovery of possession in a suit for declaration can be allowed at any stage of the proceeding. The learned counsel has relied upon the decision reported in AIR 1978 Allahabad 66 and maintained by this Court in a decision reported in A. I. R. 1979 Patna 98. On the other hand, Mr. Girish Nandan Singh submitted that the defendants have taken specific defence in the written statement that the suit is barred by section 34 of the Specific Relief Act. Thereafter the plaintiff omitted the relief of recovery of possession. In such a situation, the court below has rightly rejected the prayer after dismissal of the suit at the belated stage.

3. I have gone through the impugned order passed by the learned First appellate court. Addition of relief by the amendment admittedly will not amount to re-trial of the suit rather the appellate court is to decide the appeal on the basis of evidence adduced by the parties. The court below is not correct in law in holding that merely because the relief was available to the plaintiffs at the time when the suit was filed and since the same was not added in the plaint, the subsequent prayer for addition of relief by amendment cannot be allowed. The proposed amendment also cannot be said to be malafide for the reason that the trial court in its judgment has decided the issue regarding the suit being hit by the provision of section 34 of the Specific Relief Act which has necessitated the plaintiffs to seek amendment of the plaint. In that view of the matter, the approach of the court below is not correct and the impugned order suffers from serious illegality. Having regard to the facts and circumstances of the case, this revision petition is allowed and the order passed by the court below is set aside and consequently the amendment sought for by the plaintiffs is allowed.