

(1998) 09 PAT CK 0055

In the Patna High Court

Case No : Civil Revision No. 1953 of 1997

Smt. Bimla Devi and Others

APPELLANT

Vs

Shiv Narain Singh @ Shiv Narain Prasad Singh and Others

RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Citation : (1999) 1 BLJR 282 : (1998) 3 PLJR 387

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This Civil revision application is directed against the order dated 5.9.97 passed by 2nd Additional District Judge, Banka in Title Appeal No. 33 of 1988 whereby he has rejected the amendment petition filed by the petitioners respondents seeking amendment of their written statements.

2. The plaintiffs/appellants filed Title Suit No. 74/70 in the Court of Subordinate Judge, Bhagalpur for declaration that the land in suit described in Schedule A of the pLalnt belongs to the plaintiff and the defendants second party and the defendants first set have no right, title and interest in the suit land. A further declaration was sought for that the alleged Sudhbharna deed dated 9.7.1929 and the alleged Kewala dated 4.7.1940 were farzi transaction and formation of chak in the name of the first party is ultra vires, null and void, illegal and inoperative. The plaintiffs case, inter alia, is that the Sudhbharna deed executed on 9.7.1929 in respect of land measuring 13.35 acres and the sale deed dated 4.7.1940 executed in the name of the petitioners are farzi document in which plaintiff No. 1 and his elder brother Ram Charan Singh were not party. The plaintiffs' further case is that the plaintiffs and the defendants are Gotias and they were on friendly terms and in that back ground such farzi documents were executed. It is alleged that the farzi nature of the document appears from the fact that Kewala was executed showing less amount of consideration money than the Sudhbharna money.

3. Two sets of written statements were filed, one on behalf of defendant Nos. 1 to 7 (petitioners) and second on behalf of defendants 8 to 15. In the written statement filled by the petitioners it was pleaded that the defendants first party were the real owner in possession of the suit land and the Sudhbharna deed and the subsequent sale deeds were genuine documents executed for a valuable consideration. It was further pleaded that after coming into possession of the said land there was separation of the family of the defendants first party and separate rent receipts in respect of the separate portions of land were granted in favour of different family members of the defendants first party. It appears that a plaintiffs' suit was heard and dismissed by the trial Court and against that judgment and decree plaintiffs' filed Title Appeal No. 43/88. In the said appeal the defendants petitioners filed a petition for amendment of the written statement. By the proposed amendment the defendants petitioners wanted to introduce some facts in different paragraphs of the written statement. The petitioners wanted to add that the land measuring 2.56 acres lying west of plot No. 99 are also included in the Sudhbharna deed dated 9.7.1929. The said prayer of amendment was opposed by the plaintiffs appellants by filing rejoinder. The learned Court below after hearing the parties rejected the amendment petition by the order impugned.

4. Mr. Ram Balak Mahto, Sr. Counsel appearing for the petitioners assailed the impugned order as being illegal and wholly without jurisdiction. The learned Counsel submitted that the amendment sought for is formal in nature and are nothing but by way of clarification inasmuch as the Plaintiffs were in no manner taken it by surprise. The defendants second set in their written statement has clearly supported the amendment by pleading those facts in the written statements. Learned Counsel further submitted that the trial Court has already appreciated the evidence regarding the actual area of land covered by Sudhbharna deed and the sale deed and as such there was no justification in refusing the amendment sought for by the petitioners. Learned Counsel further submitted that the Court below was not correct in law in holding that admission could not be withdrawn by amendment. I do not find much force in the submission of the learned Counsel. From perusal of the impugned order it appears that in the original written statement filed by the defendant/petitioners they have categorically and specifically stated that the Sudhbharna deed included the land measuring 13.35 acres for a consideration of Rs. 11,00/- and the sale deed included the area measuring 12.78 acres for a consideration of Rs. 800/-. The learned appellate Court further considered the evidence of the defendants and found that D.W. 7 who is one of the defendant also admitted this fact in paragraph 25 of his evidence that the Sudhbharna deed was for 13.35 acres of land while sale deed was in respect of 2.78 acres of land. The learned Court below, therefore, came to the conclusion that the proposed amendment sought for by the defendants was nothing but to withdraw the admission already made in the pleading as also in the evidence. In my opinion the impugned order passed by the Court below is perfectly legal and justified. The learned Court below also

referred several decisions of the Apex Court and the High Courts for the proposition that such type of amendment could not be allowed. The submission of Mr. Ram Balak Mahto, learned Counsel appearing for the petitioners relied upon the decision of the Apex Court in the case of Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, , for the proposition that admission can be withdrawn by seeking amendment of the pleading. The ratio decided in the aforesaid decision has been reconsidered by the Apex Court in the case of Heeralal Vs. Kalyan Mal and Others, . The Apex Court after considering its two earlier decisions in Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., , and Panchdeo Narain Sriuastava's case (supra), has finally settled the law that once the written statement contains an admission in favour of the plaintiff then by amendment such admission of the defendants cannot be allowed to be withdrawn if such withdrawal will amount to totally displacing the case of the plaintiff which would cause him irreparable prejudice.

5. As noticed above, the defendants in their written statement have specifically pleaded about the area of the Land covered by Sudhbharna deed of 1929 and sale deed of 1940. The defendants also supported those facts by adducing evidence. The defendants-petitioner, therefore, cannot be allowed to make further pleading by amendment that more area of lands are covered by those documents. If the submission of the learned Counsel that the facts stated in the amendment petition has been supported by the second set of defendants is correct and there are sufficient evidence on record then the Court below will not be precluded from considering those facts and coming to the right decision. But so far prayer of the defendants petitioners for amendment of the written statement by introducing those facts, I am of the opinion that in the light of the principles laid down by the Apex Court such amendment cannot be allowed.

6. Having regard to the facts and circumstances of the case, the impugned order passed by the Court below is in accordance with law and there is neither any illegality or infirmity in the said order. This application is, therefore, dismissed.