

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.576 of 2019**

Brij Mohan Mishra, Son of Late Baldeo Mishra, Resident of Village- Yogiwar,
Post Office- Areraj, Police Station- Govindganj, District- East Champaran.

... .. Petitioner/s

Versus

- 1.1. Kripa Kuwar, W/o Late Krishna Mohan Mishra Resident of Village- Yogiwar,
Post Office- Areraj, Police Station- Govindganj, District- East Champaran.
- 1.2. Vikash Mohan Mishra S/o Late Krishna Mohan Mishra Resident of Village-
Yogiwar, Post Office- Areraj, Police Station- Govindganj, District- East
Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Raghav Prasad, Advocate
For the Respondent/s	:	Mr. Dharendra Kumar, Advocate Mr. Sumit Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 27-01-2025

Heard learned counsel for the parties on the point of admission and I intend to dispose of the present petition at the stage of admission itself.

2. The petitioner is aggrieved by the order dated 21.06.2018 passed by the learned Sub Judge, Areraj in Partition Suit No. 984 of 2014 whereby and whereunder the learned Sub Judge allowed the amendment petition dated 10.05.2018 filed by the plaintiffs/respondents, for amendment in the plaint, under Order VI Rule 17 read of the Code of Civil Procedure (for short 'the Code').

3. Learned counsel for the petitioner submits that the



petitioner is the defendant in Partition Suit No. 984 of 2014 which has been filed by the plaintiffs/respondents seeking $\frac{1}{2}$ share in the suit property. During pendency of the trial, plaintiffs filed a petition on 10.05.2018 under Order VI Rule 17 of the Code for amendment of plaint. By filing the application for amendment, the plaintiffs sought declaration to the effect that any deed of gift or Will executed by his mother is wrong and illegal and his mother has got no right to execute the Will or gift deed and the same was not binding upon the plaintiffs. The defendant/petitioner filed his rejoinder mentioning *inter alia* that the deeds were executed 6-7 years back and gift deed was mentioned in written statement of the Partition Suit No. 52 of 2011 on 13.08.2012. Similarly, the probate petition was filed by the wife of the defendant bearing Probate Case No. 23 of 2011 and the plaintiff appeared in that case and filed his reply. Thus, the gift deed has been challenged after six years and declaration against Will has been sought after seven years. Learned counsel further submits that the limitation period for challenging the documents is three years only and hence, a time barred relief has been sought by way of amendment. Learned counsel further submits that the learned trial court though mentioned that the amendment sought was barred by law of limitation still it



allowed the application for amendment at the cost of Rs. 1,000/-. Learned counsel thus submits that the approach of the court is against the law. The amendment is not only time barred but it has also been filed after the commencement of trial and no due diligence for not bringing the amendment earlier has been shown. Thus, the learned counsel submits that the impugned order is not sustainable and the same needs to be set aside.

4. Learned counsel appearing on behalf of respondent submits that the amendment has been allowed in the interest of justice and to avoid the multiplicity of litigation and this was the reason for allowing the amendment by the learned trial court. Learned counsel further submits that the amendment has been sought to introduce facts about the gift deed/Will executed by the mother of the respondent and petitioner with regard to suit property and if the same is not allowed, it would result in multiplicity of litigation and the controversy between the parties could not be adjudicated. Thus, the learned counsel submits that the impugned order needs no interference by this Court. In this regard learned counsel relied on the decision of this Court in the Case of *Kamal Kishore Prasad vs. Sri Lal Kumar Rai & Ors.* (*Civil Misc. No. 657 of 2017*) whereby and whereunder, vide judgment dated 12.06.2016, this Court relying on the decision of



the Hon'ble Supreme Court in the case of *Life Insurance Corporation of India vs. Sanjeev Builders (P) Ltd.*, reported in *2022 SCC OnLine SC 1128*, allowed the amendment even after commencement of trial.

5. I have given my thoughtful consideration to the rival submission of the parties. Admittedly, the amendment which has been sought, has been brought, after commencement of trial and the nature of amendment makes it abundantly clear that a time barred claim is sought to be introduced. Order VI Rule 17 deals with the amendment in pleadings and it reads as under:-

“17. Amendment of pleadings.-The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

6. If the plaintiffs/respondents were having



knowledge about the instruments which they sought to be brought through the amendment claiming it to be without title and not binding upon the plaintiff, the same should have been brought prior to the commencement of trial and ideally when the plaint was filed. If no relief could be granted on the ground of limitation, at the same time the said amendment could not be casually allowed for another reason that the amendment has been sought to be introduced after commencement of trial without showing any due diligence for not bringing the amendment earlier. On these counts, the learned trial court erred while passing the impugned order because being a court of law it was supposed to proceed in the matter strictly in accordance with law. When the law prohibits amendment of such nature, the learned trial court should have refrained from allowing such amendment.

7. The Hon'ble Supreme Court in the case of *Life Insurance Corporation of India (supra)* has held that by way of amendment, the prayer for amendment is generally required to be allowed unless a time barred claim is sought to be introduced. In such case the claim being time barred becomes a relevant factor for consideration. If the contention of the plaintiff is taken to be true that he was not having the



knowledge of execution of the said gift deed earlier but once the plaintiff has got the knowledge, the limitation will start running and in the present case the plaintiff was having the knowledge 6-7 years back about the instruments and not bringing the amendment earlier is a clear case of negligence on part of the plaintiff and the plaintiff cannot be allowed to take benefit of his own wrong. For this reason, the reliance placed by the respondent on the case of ***Kamal Kishore Prasad (supra)*** is not appropriate. Law on this point is very much clear that a time barred amendment could not be allowed on which an independent suit would not be maintainable on the ground of limitation. Moreover, when the trial has proceeded ahead from the preliminary stage and the evidence of the parties has been closed, any amendment at the stage could be allowed only if the plaintiff could have shown due diligence for not bringing the amendment earlier which is not the case of the plaintiff. Therefore, the amendment sought by the plaintiff/respondent was clearly barred under the proviso to Order VI Rule 17 and also on the ground of seeking introduction by way of amendment of a time barred claim. Furthermore, the plaintiffs/respondents have utterly failed to show that despite due diligence they could not have raised the matter earlier in



time. Hence, such amendment will be hit by proviso to Order VI Rule 17 of the Code.

8. The Hon'ble Supreme Court in the case of **Radhika Devi vs. Bajrangi Singh & Ors.**, reported in **AIR 1996 SC 2358**, in paragraph nos. 5 and 6 held thus:-

*“5. We find no force in the contention of the appellant. No doubt, the amendment of the plaint is normally granted and only in exceptional cases where the accrued rights are taken away by amendment of the pleading, the Court would refuse the amendment. This Court in **Laxmidas Dahyabhai Kabarwala vs. Nunabhai Chunilal Kabarwala [(1964) 2 SCR 567 at 582]** held thus :*

“It is, no doubt, true that, save in exceptional cases, leave to amend under 0.6, Rule 17 of the Code will ordinarily be refused when the effect, of the amendment would be to take away from a party a legal right which had accrued to him bay lapse of time. But this rule can apply only when either fresh allegations added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is one



of the questions to be considered in allowing such clarification of a matter already contained in the original pleading. The present is a fortiori so. The defendants here were not seeking to add any allegation nor to claim any fresh relief which they had prayed for in the pleading already filed”.

6. *In that case this Court considered the cross-objections to be treated as a cross suit since no alteration was being made in the written statement to treat it was a plaint originally instituted. The amendment which was sought to be made was treated to be clarificatory and, therefore, this Court had upheld the amendment of the written statement and treated it to be a cross suit. The ratio therein squarely applies to a fact situation where the party acquires right by bar of limitation and if the same is sought to be taken away by amendment of the pleading, amendment in such circumstances would be refused. In the present case, the gift deed was executed and registered as early as July 28, 1978 which is a notice to everyone. Even after filing of the written statement, for 3 years no steps were taken to file the application for amendment of the plaint. Thereby the accrued right in favour of the respondents would be defeated by permitting amendment of the plaint. The High Court, therefore, was right in refusing to grant permission to amend the plaint”.*



9. In the light of discussion made hereinabove, the impugned order dated 21.06.2018 passed by the learned Sub Judge, Areraj in Partition Suit No. 984 of 2014 is not sustainable and the same is set aside.

10. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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