

Murarai Prasad and ors. Vs. Indu Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/120007

Court : Patna

Decided On : Jan-18-2008

Judge : S.N. Hussain, J.

Appellant : Murarai Prasad and ors.

Respondent : indu Devi and ors.

Prior history : S.N. Hussain, J. 1. Heard learned Counsel for the petitioners and learned Counsel for the opposite parties. 2. This Civil Revision has been filed by the plaintiff petitioners challenging order dated 2-9-2004, by which the learned Munsif, Sherghati, Gaya, rejected the petition filed by the plaintiffs for amendment of the plaint in Title Suit No. 30 of 1999. 3. The aforesaid title suit was filed by the plaintiff petitioners for the relief that registered sale deed No. 5906 dated 17-9-1990 be dec

Judgement :

S.N. Hussain, J.

1. Heard learned Counsel for the petitioners and learned Counsel for the opposite parties.

2. This Civil Revision has been filed by the plaintiff petitioners challenging order dated 2-9-2004, by which the learned Munsif, Sherghati, Gaya, rejected the petition filed by the plaintiffs for amendment of the plaint in Title Suit No. 30 of

1999.

3. The aforesaid title suit was filed by the plaintiff petitioners for the relief that registered sale deed No. 5906 dated 17-9-1990 be declared to be void, illegal, without consideration, sham and collusive and not binding upon the plaintiffs and for restoration of their possession by evicting defendant No. 1.

4. It appears that the defendants have filed their written statement contesting the suit, whereafter the issues were framed and the depositions of plaintiff-witnesses are going on and during that period a petition for amendment of the plaint has been filed by the plaintiffs on 8-12-2003. By the said proposed amendments, the plaintiffs want to add some statements at the end of paragraph No. 12 of the plaint and also want to add one more sale-deed bearing No. 5907 to the already mentioned sale-deed No. 5906 in paragraph No. 10 and In relief No. 1 of the plaint and consequently to substitute the words 'an' and 'a' by the words 'two' in paragraphs No. 8 and 10 of the plaint. By the said amendment, the plaintiffs also want to add two more reliefs bearing '1A' and '1B' to the already existing reliefs and also want to raise the valuation of the suit from Rs. 14,000/- to Rs. 28,000/-. A further relief is sought that from paragraph 16, the words 'ad valorem Court fee of Rs. 1864/-' be penned through and in its place words 'fixed Court fee of Rs. 750/-' be substituted. Learned Counsel for the petitioners submits that the aforesaid amendments are necessary for the full and final adjudication of the suit.

5. On the other hand, learned Counsel for the defendant opposite parties vehemently opposes the contention of learned Counsel for the plaintiff petitioners and submits that amendments sought are quite mala fide and change the entire nature of the suit and have also been sought at the belated stage when twelve witnesses have already been examined on behalf of the plaintiffs.

6. Considering the facts and circumstances of the case as well as the materials on record, it is quite apparent that the depositions of the plaintiff-witnesses are continuing and the defendants have not started examining their witnesses. It also transpired that the proposed amendments in the relief portion are merely consequential to the reliefs already sought by the plaintiffs in their plaint and for that purpose the amendments in other paragraphs of the plaint are required,

except the amendment sought with respect to the Court fees. So far the proposed amendment with respect to the Court fee is concerned, the relief in the plaint was for declaring the sale deed in question to be illegal and void, but the said relief has not been deleted rather another sale-deed has been added due to which the plaintiffs themselves have prayed for enhancing the valuation of the suit from Rs. 14,000/- to Rs. 28,000/-. In the said circumstances, there can no occasion for amending the plaint with respect to the Court fee i.e. changing the ad valorem Court fee to fixed I Court fee.

7. The learned Court below has passed the impugned order without considering the aforesaid facts and circumstances and without appreciating the special provision of law and hence the impugned order suffers from jurisdictional error. In the said circumstances, the impugned order is set aside and this Civil Revision is allowed in part. As all the amendments sought by the plaintiff-petitioners, except the changing of Court fee from ad valorem Court fee to fixed Courtfee, which is rejected, is hereby allowed.

8. The learned Court below is directed to fix ad valorem Court fee on the basis of the valuation of both sale deeds Nos. 5906 and 5907, which are sought to be declared illegal and void by amending the plaint. However, the defendants will be at liberty to file their additional written statement in connection with the amended pleadings.