

Thakur Mahto and ors. Vs. Jira Devi @ Jiro Devi and anr.

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Court : Patna

Decided On : Apr-04-1997

Judge : Dharampal Sinha, J.

Appeal No. : Civil Revision No. 1920 of 1995

Appellant : Thakur Mahto and ors.

Respondent : Jira Devi @ Jiro Devi and anr.

Disposition : Petition Dismissed

Judgement :

Dharampal Sinha, J.

1. Heard learned Counsel for the petitioners as also counsel for the opposite parties.

2. In this revision petition the petitioners, who were defendants in Title (Partition) Suit No. 31 of 1990, pending in the Court of Sub-ordinate Judge I. Biharsharif, have assailed an order dated 2.12.1995, passed by the learned Subordinate Judge, whereby he has allowed a petition filed under Order VI, Rule 17 of the Code of Civil Procedure by the plaintiffs proposing some amendments in their plaint.

3. The amendment petition had been filed on 8.11.1995 proposing amendment, as appears from the copy of the petition for amendment annexed as Annexure-1 to this revision petition, which was mainly related to some facts constituting fraud in the execution of a deed of gift and a deed of sale. The plaintiffs had filed title suit for partition and the defendants-petitioners herein had filed their written statement on 4.9.1992, in which they had taken stand that some of the subject matter of the partition as included in the plaint has been acquired by them under a deed of gift executed long back in the year 1967 and some under a sale-deed also a very old one. The amendment petition had been filed on 8.11.1995 and the learned Counsel for the petitioners has strongly contended that the amendment was proposed after more than three years from the filing of the written statement on 4.9.1992 when the plaintiffs opposite parties herein became aware of the stand taken by the defendants petitioners about acquiring rights over the suit properties by virtue of a deed of gift and a deed of sale. According to his submission, the opposite parties plaintiffs could make amendment alleging fraud in the execution of the deed of gift or sale deed only within three years from the date of filing of the written statement. Relying on a recent decision in the case of Radhika Devi v. Bajrangi Singh and Ors. reported in : [1996]1SCR768 , he has contended that in similar situation the Supreme Court has held that amendment petition could not be allowed. So the crux of the argument is that the defendants-petitioners have already acquired a right in view of the provision of Article 56 of the Limitation Act, 1963 that the deed of gift and the deed of A sale could not be challenged on the ground of fraud after expiry of three years period from the date of knowledge and the plaintiffs must be deemed to have knowledge about the document on 4.9.1992 and so when the petition proposing amendment was filed on 8.11.1995, it was definitely time barred and the plaintiffs could not challenge the documents on the ground of fraud made after expiry of the three years period from 4.9.1992.

4. On the other hand learned Counsel for the opposite parties-plaintiffs has submitted that in fact the plaintiffs became aware of the full facts of the fraud committed in the execution of the deed of gift and deed of sale on 11.11.92 and 17.11.92 after they obtained the certified copies of the documents and when they filed petition proposing amendment on 8.11.1995 it was within the period of three years from the date of knowledge. In this connection he has referred to paragraph

9 of the petition proposing amendment which reads as follows:

(9) That in line No. 5 of para No. 13 of plaint after the words defendant 5 and before the word in the following line be written and also on 11.11.92 and 17.11.92 when the plaintiff obtained C.C. of deed of gift dated 16.3.1967 and sale-deed dated 17.2.67 and got definite knowledge of the fraudulent deed of gift and sale-deed.

According to his submission the plaintiffs-opposite parties were entitled to challenge the documents deed of gift and deed of sale, within three years, from the date when they actually came to know about the fraud after obtaining certified copies of the documents.

5. Learned Counsel for the petitioners in reply has submitted that earlier also petition proposing amendment had been filed but one was dismissed for default and the other was rejected.

6. Having considered carefully the submissions I am of the considered opinion that since the opposite parties-plaintiffs had definitely stated in the petition proposing amendment itself that only after obtaining certified copies of the concerned documents they got-knowledge on 11.11.92 and 17.11.92 when the petition proposing amendment was filed on 8.11.1995 within three years, it cannot be said that the amendment had been proposed after expiry of the period of three years and the plaintiffs, because of the provision of Article 56 of the Limitation Act, had lost the right to challenge the documents on the ground of fraud etc. No doubt, after filing of the written statement in which the defendants had already taken stand that they had acquired title over some of the items of the properties, which were the subject matter of the partition suit, on basis of the deed of gift and on the basis of the sale deed, but the plaintiffs could by that time be deemed to have become aware only the stand that had been taken as to how the defendants claimed to have acquired title over some items of the properties, but they could know about the exact position only after they got the certified copies of the documents. It is not stated that when the written statement was filed on 4.9.1992 the documents, deed of gift and deed of sale, had also been produced, which could be done under the provision of law and then the other side could have

inspected the originals. When it is not the case of the petitioners-defendants that the other side had got opportunity for looking into the documents earlier, I do not think that the impugned order can be said to be bad when in the petition proposing amendment itself, the fact had been stated that they could know about the fraud on 11th and 17th November, 1992. So, it is difficult to hold in the situation that the proposed amendment had definitely been filed beyond the period of three years after having knowledge of the fraud etc. committed in the execution of the deed of gift and deed of sale. The ratio of the decision reported in : [1996]1SCR768 , in my opinion, cannot apply to the facts of this case.

7. So, in this view of the matter, I dismiss this revision petition.

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