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Court : Patna

Decided On : Dec-15-1999

Judge : P.K. Deb, J.

Appeal No. : C.R. No. 794 of 1998

Appellant : Birendra Kumar Singh and ors.

Respondent : Jayant Kumar Dutta and ors.

Judgement :

P.K. Deb, J.

1. This revision petition has arisen against the order dated 28-3-1998 passed by Sub-Judge-I, Dumka, in Title Suit No. 37 of 1992 whereby and whereunder the amendment sought for by the petitioners has been rejected.

2. The petitioners as plaintiffs filed the above-mentioned suit against the defendants-opposite parties for getting the Kebala in respect of the scheduled land from the defendants on the basis of the agreement for sale arrived at. It was the contention of the plaintiffs in the suit that the agreement for sale was arrived at on payment of an amount towards the consideration for sale and the possession was remained with the plaintiffs as they were in possession over the same as tenant of the defendants. But, with this plea or that the sale-deed was not being executed, although the plaintiffs were pressing for the same. But, on different occasions

further payments were taken from the plaintiffs by the defendants towards the agreement for sale. Lastly, the plaintiffs finding no other alternative had filed the suit for specific performance as mentioned above. It was mentioned in para-14 of the plaint that as to how the plaintiffs were always ready with money for getting the Kebala executed in favour of them by the defendants. Both the parties adduced evidence and when the suit was at the ripen stage for disposal then the plaintiffs came up with the prayer for amendment under Order VI, Rule 17 of the Code of Civil Procedure of the plaint for inclusion of an averment in the plaint as required under Section 16(c) of the Specific Relief Act to the effect that the plaintiffs were and are always ready and willing to perform part of their contract by payment of balance amount to the defendants to get Kebala executed by them. I may be mentioned that bulk of the consideration amount had already been paid from the side of the plaintiffs to the defendants. The amendment sought for has been vehemently objected to from the side of the defendants and the learned Court below after hearing both the parties came to the finding that the amendment sought for shall change the nature and cause of action of the suit and that such amendment cannot be allowed at such belated stage when few non-mentioning of readiness as per mandatory provisions of Section 16(c) of the Specific Relief Act had accrued a right in favour of the defendants adverse to the plaintiffs.

3. It has been argued for and on behalf of the plaintiffs-petitioners that the learned Court below committed error of law in rejecting the prayer for amendment when such prayer was made only to fulfil the technicality & formality under Section 16(c) of the Specific Relief Act. It has been pointed out by referring para-14 and other paragraphs of the plaint that practically the plaintiffs had shown their intention in the plaint itself as to how they were always ready and willing to perform their part of the contract. Only due to inadvertence or mistake the specific averment as required under the law had not been mentioned and that was only to be included which did not in any way change the nature of the suit nor the cause of action has been changed.

4. On the other hand, learned Senior Advocate for the opposite parties by referring to different judgments of the apex Court as reported in : [1996]1SCR768 in the case of Radhika Devi v. Bajrangi Singh and Ors. and : [1995]3SCR960 in the case

of K. Raheja Constructions Ltd. v. Alliance Ministries and Ors. submitted that the amendment sought for is hopelessly barred by limitation as the agreement for sale was executed in the year 1986 and the suit was filed in the year 1992 and the amendment has been sought for in the year 1996. His contention is that even if the limitation is construed from the date of filing of the suit as cause of action then also prayer made for inclusion of the amendments as per mandatory provisions of Section 16(c) of the Specific Relief Act is hopelessly barred by limitation.

5. Mr. Jha appearing for and on behalf of the plaintiffs-petitioners has referred to recent judgment of the apex Court in the case of Lakhi Ram (dead) through LRs. v. Trikha Ram and Ors. : [1998]1SCR705 , which exactly fits in with the present circumstances of the case. In that case, amendment was allowed at the appellate stage in the specific performance suit but such allowance of the amendment was challenged in the High Court and the High Court held that the amendment was not permissible under the law and then the matter went to the apex Court where it was held that by inclusion of the readiness and willingness in the plaint at a belated stage does not change the cause of action and the suit for specific performance starts from the date of filing of the suit and not related to the date of agreement of the suit. In the present case, although agreement was arrived at between the parties in 1986 but subsequent payments were made up to the year 1992 so the date of agreement had continued to be in existence till the date of filing of the suit. When from the averments in the plaint, it could be found the very intention of the plaintiffs that they were ready always to pay the balance amount to get the Kebala executed then specific averment of willingness as required under Section 16(c) of the Specific Relief Act remains a formal one and could be allowed at any stage.

6. Thus, I find that the learned Court below has committed error of law in disallowing the amendment. But, when there are laches on the part of the plaintiffs no doubt in coming for claiming amendment at the belated stage then such laches definitely created harassment to the defendants which can be compensated by money-value. In the result, the revision petition is hereby allowed and the amendment sought for shall be allowed by the Court below on condition of deposit of Rs. 250/- from the side of the plaintiffs-petitioners within a period of three weeks from this date. It is further made clear that after such amendment is allowed, the

opposite parties must be given opportunity for filing additional written statement and also for any additional evidence, if necessary.

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