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Sujan Devi (Smt.) Vs. Bindeshwari Devi (Smt.) and ors.

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SooperKanoon Citation : sooperkanoon.com/519188

Court : Jharkhand

Decided On : Oct-19-2005

Reported in : [2005(4)JCR315(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17; [Constitution of India](#) - Article 227; Code of Civil Procedure (CPC) (Amendment) Act, 2002 - Sections 16

Appeal No. : WP (C) No. 2215 of 2005

Appellant : Sujan Devi (Smt.)

Respondent : Bindeshwari Devi (Smt.) and ors.

Advocate for Def. : Rajendra Prasad and; S.P. Roy, Advs.

Advocate for Pet/Ap. : Indrajit Sinha, Adv.

Judgement :

ORDER

M.Y. Eqbal, J.

1. Heard Mr. Indrajit Sinha, learned counsel for the petitioner and Mr. Rajendra Prasad, learned counsel for the respondents.

2. This application under Article 227 of the [Constitution of India](#) is directed against the order dated 10.2.2005 passed by Sub-Judge, VI Dhanbad in Title (Partition) Suit No. 46/2000, whereby he has rejected the petition filed by the plaintiff/petitioner under Order VI, Rule 17, CPC for amendment in the plaint.

3. The plaintiff/petitioner filed the aforementioned suit for a decree for partition of his 1/5th share in the suit property and for curving out his share and passing a final decree. During pendency of the suit, a petition under Order VI, Rule 17, CPC was filed. By the said petition a further relief for a decree for cancellation of registered sale deed dated 23.3.1982 executed by defendant No. 5 in favour of defendant No. 6 was sought for. The said prayer for amendment of the plaint was opposed by defendant/respondents by filing rejoinder. The court below after hearing the parties, rejected the said application on the ground that the hearing of the suit already commenced and further that pleading to that effect has already been made in the plaint claiming interest in the suit property which was transferred by defendant No. 5 in favour of defendant No. 6 in the year 1982 by registered sale deed dated 23.3.1982.

4. Prom perusal of the plaint, a copy of which has been annexed as Annexure I to the application, it appears that the plaintiff already disputed the title of defendant No. 6 in the portion of the suit property which was transferred by defendant No. 5 in favour of defendant No. 6. In the rejoinder to the amendment petition, the respondents have stated that a suit was filed by defendant No. 5 in the year 1989 being Title Suit No. 20/89 for cancellation of deed of gift of the year 1982 but the suit was ultimately withdrawn. It is, therefore, clear that on the basis of the facts already pleaded in the plaint, the plaintiff/petitioner has sought for a relief for declaration that the said transfer made by defendant No. 5 in favour of defendant No. 6 was illegal and void. It is well settled that merely because amendment of the plaint is allowed and the additional relief is added in the plaint that doesn't mean that such relief has to be granted to the plaintiff. The Court has to decide the issue with regard to relief sought for by the plaintiff both on the question of limitation and on the question of merit.

5. Be that as it may, since the facts already pleaded in the plaint, the relief sought for by the plaintiff ought not to have been rejected by the Court below, particularly in view of the provisions of Section 16 of the Code of Civil Procedure Amendment Act, 2002.

6. For the aforesaid reasons, this writ application is allowed and the impugned order is set aside. Consequently, the amendment sought for by the plaintiff is allowed.

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