

IN THE COURT OF SUCC. CIVIL JUDGE (SENIOR DIVISION)-II PATNA CITY**T.P.S NO.-102 /1999****O R D E R**

23-08-24 Today the record is fixed for order on petition of plaintiff dated 18.12.23 under Order 6 Rule 17 and under section-151 of C.P.C.. Case called out both parties are present before the court through their counsels.

Learned counsel on behalf of plaintiff while arguing stated that the plaintiff has filed the present suit for getting the decree of partition with respect to the suit property against defendants that in course of the preparation of the written argument it came in the knowledge of the plaintiff that only due to oversight of the ex-conducting lawyer of the plaintiff certain typing mistake took place in the plaint and hence necessity of the present petition arose. That the purposed amendment is formal one by which neither nature of the suit is being changed in any manner nor new case is being instituted by the plaintiff nor any admission is being withdrawn by the plaintiffs but on the other hand for deciding the real matter in controversy among parties it is necessary one and hence necessity of the present petition arose. It is therefore prayed that your honour may kindly be pleased to permit the plaintiff to amend their pleading in the light of the present petition in the ends of justice. And for this the petitioner shall ever pray. The plaintiff prays to amend the following :-

1. That in the 7th line of Para no.-1 of the plaint the word “Narendra” is require to be deleted and its place the word “Mahendra” is require to be inserted.
2. That in 3rd line of Para-5 of the plaint after the word “Properties” and before the word “In” the word” from the joint family fund” is require to be inserted.

3. That in 6th line of page-9 after the digit “3” the sentence “whereby and where under the plaintiff and defendant no.-01 to 03 each have their equal 1/4th share” is require to be inserted.
4. That in 4th line of para no.-7 of the plaint after the word “deeds” and before the word “in” the word “from the joint family fund” is require to be inserted.
5. That after the relief no.-”a” a new relief as relief no.-”1-a” with the following words may kindly be inserted :-

Relief no.-1a :- That after granting the relief no.-, it be further declared by the learned court that sale deed dated 16-02-2010 bearing its deed no.-777 as executed by defendant no.-1 in favour of the defendatn no.-17, sale deed dated 12-05-2010 bearing its deed no.-2878 as executed by defendant no.-1 in favour of the defendant no.-18, sale deed dated 19-11-2011 bearing its deed no.-27561 as executed by defendant no.-19 & 20 are illegal, in-operative and not binding upon the plaintiff in any manner.

Ld. counsel on behalf of defendants through its rejoinder has vehemently opposed the petition of plaintiff and argue that amendment sought in Para-1 is formal in nature and may be allowed. However, the amendments sought other than that can't be allowed as it changes the nature of suit property and also nature of suit. Those amendments amounts to withdrawl of admission by the plaintiff. Amendment no.-3, 4 are vague in nature. If amendment no.-5 is allowed then character of suit shall be changed and plaintiff will have to pay advolerum court fee. The relief is also barred by limitation that under the facts and circumstances it is apparently clear that the amendment sought for is malafide, after thought, malicious and barred by limitation and deserved to be truned down. It is therefore prayed that your honour may graciously be pleased enough to reject the petition under order dated 18-12-2023 in liminary but with heavy cost.

Heard both counsels on behalf of plaintiff and defendants, perused the petition alongwith the whole record. Amendment sought in Para-1 is allowed as has no objection by the defendants. For the amendments sought in Para-2, 3 & 4 are the facts at this stage being pleaded in the plaint and its effect can only be asserted at the stage of final adjudication of the suit, therefore if allowed does not cause any hardship or in justice to the defendant. For the amendment sought in Para-5 it appears that it is the relief which is being added against the parties who are already added in suit earlier for being pendente-lite purchaser, if the said relief is not allowed to be added then the object of making them party would futile. More over it is the principal of natural justice that a suit must be adjudicated in whole. Accordingly, in order to adjudicate the suit properly and fully and also to avoid various litigation, this amendment for the ends of justice is being allowed. Therefore, a petition of plaintiff dated 18-12-23 and subsequent continuation petition is hereby allowed with the cost of Rs. 5,000/- to be paid to defendant. Defendants are put at liberty to amend their pleading in the light of above amendment. O/c is being directed to call for Sheristedar report on amended relief.

Dictated

(Sanni Kumar)
Succ. Civil Judge(Sr. Div.)-II,