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**(2022) 08 PAT CK 0067**

**Patna High Court**

**Case No:** Civil Miscellaneous Jurisdiction No. 488 Of 2018

Ram Sewak Singh

APPELLANT

Vs

Babita Devi Wife

RESPONDENT

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**Date of Decision:** Aug. 22, 2022

**Hon'ble Judges:** Anil Kumar Sinha, J

**Bench:** Single Bench

**Advocate:** Ashok Kumar, Bibhuti Narayan, Ashok Kumar

**Final Decision:** Partly Allowed

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### **Judgement**

1. Heard learned counsel for the parties concerned.
2. The petitioner is aggrieved by the impugned order dated 01.12.2017 passed by the learned Munsif-II, Gaya, in Eviction Suit No. 2 of 2013, by which, the learned Trial Court has allowed the amendment sought by the respondent/defendant in the written statement.
3. The suit was filed by the petitioner for eviction bearing Eviction Suit No. 2 of 2013 seeking decree for eviction against the defendant/respondent inter alia on the fact that the suit property was purchased by the petitioner/plaintiff from the husband of the defendant/respondent namely Satya Narayan Prasad by way of a registered sale deed dated 10.11.2006.
4. The written statement was filed by the respondent/defendant in the suit and in paragraph-14 of the written statement, the defendant has categorically averred that the statement made by the plaintiff in paragraph-2 of the plaint is correct with the modification that eastern and western boundaries described in sale deed dated 10.11.2006 alleged to be executed by Deep Narayan Prasad in favour of the plaintiff is wrong and false,

hence denied.

5. Learned counsel for the petitioner submits that statement in the plaint at paragraph-2 has categorically been accepted and factum of execution of registered sale deed with regard to the suit property has been accepted by the respondent/defendant in the written statement. He next submits that after admission in written statement an amendment application has been filed after commencement of trial and after two years from the date of filing of the written statement by the defendant resiling from the admission made by her in the written statement regarding the execution and registration of the sale deed dated 10.11.2006 by the husband of the defendant in favour of the plaintiff. Learned counsel further submits that so far as amendment sought in the written statement with proposed amendment at (a) and (b) the petitioner has no objection, but so far as amendment (c) is concerned, the same is not permissible inasmuch as the respondent is resiling from her categorical admission made in the written statement at paragraph 14. In support of his argument, learned counsel relies upon the judgment of the Honâ€™ble Supreme Court in the case of Gautam Sarup v. Leela Jetly and Others, reported in (2008) 7 SCC 85.

6. On the other hand, learned counsel for the defendant/respondent submits that the amendment sought by the respondent is general in nature and the respondent being a lady did not understand the repercussion and effect of the admission made in the written statement at the time of filing of the written statement.

7. I have heard learned counsel for the parties. The Honâ€™ble Supreme Court in the case of Gautam Sarup (supra) has held that a categorical admission cannot be resiled from but in a given case, it may be explained or clarified.

8. From perusal of the statement made in the written statement filed by the respondent at paragraph 14, it appears that there is a categorical admission on part of the defendant/respondent to the statement made by the plaintiff in paragraph-2 of the plaint that the suit property was purchased by way of a registered sale deed from the husband of the defendant/respondent dated 10.11.2006.

9. From the fact of the present case, it appears that there is a categorical admission on the part of the defendant/respondent in the written statement

regarding purchase of the suit property by plaintiff vide a registered sale deed. Accordingly, in view of the aforesaid judgment in the case of Gautam

Sarup (supra), the defendant/respondent cannot resile from her admission by way of the amendment made in the written statement.

10. By proposed amendment No. (c) the respondent/defendant is trying to resile from her admission made in the written statement. Accordingly, in my

opinion, the same cannot be permitted inasmuch as categorical admission cannot be resiled from by the respondent. The court below has allowed all

the three proposed amendment i.e. (a), (b) and (c). Since this Court has found that amendment (c) is not permissible, accordingly, that portion of the

impugned order to the extent of allowing amendment (c) is set aside.

11. It is made clear that other part of the impugned order is not interfered with by this Court and, therefore, amendment (a) and (b) allowed by the

learned Trial Court shall remain intact.

12. With the aforesaid direction and observation, this application allowed in part.