
(1997) 02 PAT CK 0032

Patna High Court

Case No: Civil Revision No. 32 of 1989

Smt. Mariam Khatoon
and Others

APPELLANT

Vs

Husna Ara Begum and
Others

RESPONDENT

Date of Decision: Feb. 19, 1997

Citation: (1997) 1 BLJR 651 : (1997) 1 PLJR 505

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

This Civil revision application is directed against the order dated 15.12.1988 passed by Learned Subordinate Judge IV, Patna in Title Suit No. 375 of 1981 here by the petitioners" petition for amendment of their plaint was rejected.

2. The petitioners" filed the aforesaid suit for partition of their 7 annas 2 pice share in the suit property after declaring that the alleged deed of gift dated 30.6.1973 purported to be executed by Amna Khatoon, since deceased, in favour of the original defendant No. 1 after Abdul Qadir was forged, fabricated, fraudulent and illegal and not binding on the plaintiffs and that defendant No. 1 has acquired no interest thereunder. From the fact stated in the Civil revision application it appears that the suit property is a residential house bearing Holding No. 54, Circle No. 118 measuring about 15 kathas situated in mohalla Moghalpura, Nawab Bahadur Road, Patna and about 22 acres of lands in village Rasulpur and Bhikhanpur both under the district of Muzaffarpur, was the personally acquired property of late Dr. Ali Ahmad, who was a well known physician of Patna. The said Dr. Ahmad purchased the said property in the name of his wife Most. Amna Khatoon since deceased, whereafter he constructed a house on his said purchased land and started living there. The plaintiffs-petitioners" further case was that Dr. Ahmad died in November, 1954 leaving behind a widow Amna Khatoon three sons, namely, Abdul

Qadir, Abdul Rahman and Abdul Rahim (defendant Nos. 1 to 3) and five daughters, namely, Rasul Bandi (defendant No. 3), Bilqees Bano (defendant No. 4), Kaniz Fatma (defendant No. 5), Mariam Khatoon (Plaintiff No. 1) and Halima Khatoon (plaintiff No. 2), who inherited the property according to their respective shares under the Mohammadan Law applicable to the Sunni Sect and they came in possession thereof. It is alleged that since the family of Dr. Ahmad was very well known and his widow Most. Amna Khatoon commanded great respect in the family, the partition of the suit property was never contemplated by the plaintiffs or the performas defendants so long as Most. Amna Khatoon was alive. After the death of Most. Amna Khatoon her eldest son Abdul Qadir (Defendant No. 1) started looking after the property on behalf of all the brothers and sisters. It was alleged that defendant No. 1 taking advantage of the absence of the brothers and sisters started mismanaging the properties. In the year 1978 the plaintiffs learnt that defendant No. 1 Abdul Qadir had applied before the Municipal Corporation for mutation of his name on the basis of forged and fabricated deed of gift dated 30.6.1973 alleged to be executed by Amna Khatoon in his favour by which the suit house of Patna along with about 13 bighas of the most valuable agricultural lands were purported to be gifted to him. During the pendency of the suit defendant No. 1 Abdul Qadir died and his heirs were substituted in his place who filed their written statements claiming the house and the land on the basis of alleged deed of gift. The defendants 2, 3 and 5 appeared and filed their respective written statement and supported the case of the plaintiffs-petitioners and demanded partition of the entire suit property. The plaintiffs-petitioners filed a petition for amendment of the plaint for addition of few lines in order to show the relationship of the defendant No. 1 Abdul Qadir or his wife with the witnesses of the alleged deed of gift. The said amendment petition was opposed by the substituted heirs of defendant No. 1 by filing rejoinder. Learned Court below after hearing the parties by the impugned order rejected the application for amendment of plaint.

3. Mr. S.S. Naiyar Hussain, Learned Counsel appearing on behalf of the petitioner has assailed the order passed by the Learned Court below as being illegal and without jurisdiction. Learned Counsel submitted that Learned Court below has committed serious illegality in so far as it held that by the proposed amendment, the plaintiffs-petitioners wanted to introduce altogether a new case. Learned Counsel submitted that Learned Court below has completely failed to appreciate the law laid down that by Apex Court in the matter of amendment of pleading. Learned Counsel relied upon a decision of the Supreme Court in the case of [Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another](#).

4. On the other hand, Md. Wasi Akhtar, Learned Senior Counsel appearing on behalf of the defendants-opposite parties submitted that no illegality has been committed by the Learned Court below in rejecting the application for amendment of the plaint. Learned Counsel submitted that in the original plaint the plaintiffs-petitioners admitted the execution of deed of gift by Bibi Amna Khatoon and it was challenged only on the ground that the same was in sham and collusive transaction. While by the proposed amendment the

plaintiffs wanted to deny the execution of deed of gift by Bibi Amna Khatoon which is not permissible under the law. Learned Counsel relied upon a decision of the Supreme Court in the case of [Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., .](#)

5. Before appreciating the rival contention of the Learned Counsel it is worth to look into the original plaint filed by the plaintiffs-petitioners, a copy of which is Annexure 1 to the Civil Revision application Paragraph 8 of the plaint the plaintiffs-petitioners pleaded that Most. Amna Khatoon died in the month of June or July, 1973 without executing any deed of gift or any document. Paragraph 8 is quoted hereinbelow.

That the deceased Most. Amna Khatoon died sometimes in the months of June or July, 1973 without executing any deed of gift or any document either with respect to her 2 annas share which she had in her husband property i.e., the suit property or any portion thereof in favour of any of her son or daughter."

6. In paragraph 12 of the plaint the plaintiffs have stated that in the month of May, 1978 the plaintiff No. 1 and 2 learnt from one of their close neighbour that defendant No. 1 applied for mutation of his name in respect of the aforesaid house, on being learnt the said fact the plaintiffs started making enquiry in the office of the Patna Municipal Corporation and came to know that defendant applied for mutation on the basis of that the suit property was gifted to him on 30.6.1973 by the deceased Most. Amna Khatoon by registered deed of gift. Paragraphs 13, 14 and 15 of the plaint are quoted hereinbelow:

That plaintiff No. 1 and 2 immediately went to Patna Municipal Corporation, Patna City Circle Officer and started making enquiries and were shocked to learned that defendant No. 1 to the utter neglect of the plaintiffs and proforma defendant No. 2 to 5 have really applied for mutation of his name over the holding No. 54 aforesaid alleging that the aforesaid holding No. 54 has been exclusively gifted to him on 30.6.1973 by the deceased Amna Khatoon and hence the plaintiff No. 1 and 2 obtained certified copy of the deed of gift dated 30.6.1973 aforesaid alleged to be executed by their mother in favour of the defendant No, 1 and became aware of the great fraud practised by defendant No. 1 on the other members of the family i.e., plaintiffs and the proforma defendant Nos. 2 to 5, in collusion with his hence namely Fazeelat Hussain, Hakim Md. Sami and Wasi Ahmad and Syed Leyakat Hussain. Defendant No. 1 has got fraudulently entered 12 bighas 16 kathas and 17 dhoor of culturable land at village Bhikhanpur which are very valuable besides the residential house at Patna City in the alleged deed of gift which contains entirely wrong and false recitals.

That it is respectfully submitted that the aforesaid deed of gift dated 30.6.1973 alleged to be executed by the deceased Amna Khatoon in favour of defendant No. 1 with respect to the properties mentioned therein, in entirely forged, fabricated and collusive and not binding on the plaintiffs and other proforma Defendants No. 2 to 5 and the aforesaid document neither ever saw the light of the day nor was ever acted upon.

That it is respectfully submitted that the deceased Amna Khatoon had neither any intention of executing any deed of gift in favour of any of his son or daughter to the exclusion of others nor she was actually gifted any of the properties muchless the residential house at Patna City or the culturable land of village Bhikhanpur to defendant No. 1 and the alleged deed of gift was never executed by her knowing the same to be a deed of gift in favour of defendant No. 1 and she never put her L.T.I, thereon and if it is found that the alleged deed of gift really bears her L.T.I. The same was obtained by practicing fraud or while she was unconscious during her last days and serious illness and the alleged deed of gift was never read out and explained to her and never accribed at her instance. The deceased Amna Khatoon went to see defendant No. 1, i.e., her eldest son and also some of her relatives at Muzaffarpur and resided with her elder son in the house of Hakim Md. Sami of Mohalla Chhoti Sariyaganj where she seriously fell ill and also used to become unconscious due to serious ailment sand old age and it is just possible that defendant No. 1 might have obtained her L.T.I, while she was in unconcious state. The plaintiff No. 2 on getting news of her serious illness rushed to Muzaffarpur and managed to bring her to Patna City on stretcher and on return from Muzaffarpur she could not recover from here serious illness and died shortly in the residential house in Patna City.

7. The plaintiffs, therefore, prayed in the suit for a declaration that the deed of gift dated 30.6.1973 alleged to be executed by deceased Amna Khatoon in favour of defendant No. 1 is sham, showy and collusive and not binding on the plaintiffs and that defendant No. 1 is not acquired any property thereof.

8. From reading of the plaint I do not find that the plaintiffs petitioners have specifically and categorically admitted the execution of deed of gift by the deceased Amna Khatoon rather it was pleaded that such deed of gift was never executed by Amna Khatoon and the same is forged and fabricated document. It is also pleaded that Most. Amna Khatoon never put her L.T.I, thereof and if it is found that the alleged deed of gift really bears her L.T.I. Then the same was obtained by practising fraud or while she was unconscious during her last days. Let us examine amendment sought for by the plaintiffs by filling amendment petition, a copy of which is Annexure 2 to this application. The amendment sought for reads as under:

That after he last line of para No. 13 of the plaint the following lines added:

It is submitted that Fazilat Hussain was the father-in-Law of brother and sister of substituted defendant No. 1, namely. Husna Ara widow of Late Abdul Quadir and Hakim Md. Sami was Chachera brother of late Abdul Quadir but they had great intimacy since childhood and further Syed Leyaquat Hussain was one of the relations of the substituted defendant No. 1, namely, Husna Ara and thus inclusion and conspiracy with each other the original defendant No. 1 late Abdul Quadir brought into existence the alleged deed of gift of which Amna Khatoon had no knowledge and the entire affairs were conducted by Hakim Sami at the instance of the original defendant No. 1 and Not in presence of Registration Authorities who had gone to take the admission of the executant.

9. From the proposed amendment sought to be introduced by the plaintiffs-petitioners in the plaint I do not find that the plaintiffs-petitioners want to introduce a new case. As stated above, in the original plaint the plaintiffs-petitioners not only disputed and denied the execution of deed of gift by Most. Amna Khatoon but also pleaded that even if the deed was executed by her the same is sham, forged and fraudulent transaction. By the proposed amendment the plaintiffs-petitioners wanted to add some more facts to clarify as to how the deed of gift appears to be forged and collusive transaction. I am, therefore, of the view that Learned Court below has committed serious error of law and error of fact in holding that the proposed amendment will amount to introducing altogether new case. I am further of the view that in the facts and circumstances of the case the decision of the Supreme Court cited by both the parties i.e., *Panchdeo Narain Srivastava v. Km. jyoti Sahay and Anr.* (supra) and *Modi Spinning & Weaving Mills Co. Ltd. v. Lodha Ram & Co.* (supra) has no application. It is not a case of the withdrawal of any admission made in the original pleading rather by the proposed amendment the plaintiffs-petitioners sought to clarify the statements made in the plaint. It is well settled that amendment of plaint which only classify the facts already stated or clarify the statements already made in the plaint should be allowed.

10. In the reason aforesaid, this Civil revision application is allowed and the impugned order dated 15.12.1988 passed by the Learned Court below in Title Suit No. 375 of 1981 is hereby set aside. Consequently, the amendment petition filed by the plaintiff petitioners is allowed. However, there shall be no order as to costs.