

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**C.M.P.No. 531 of 2024**

1. Arun Kumar Sanganeria, aged about-73 years, S/o Late Kashi Prasad Sanganeria, R/o 74H, 2<sup>nd</sup> floor, Bondel Road, Near Ballygunj Phari, Ballygunj, P.O.+P.S.-Ballygunj, District-Kolkata, West Bengal.

2. Kiran Devi Tulsiyan @ Kiran Tulsiyan, aged about 58 years, Wife of Sri. Lalit Kumar Tulsiyan, Resident of House Number-501, Vidya Apartment, Bara Gamaria, Gamaria, P.O. Gamaria, P.S. Adityapur, Dist. Seraikella, Kharswan.

.... .... ... ..Petitioners

Versus

Balram Mahato, S/o Late Amrit Mahato, R/o Ward No.13, Kandra, P.O.+P.S.-Kandra, Dist. Seraikella-Kharswan, Jharkhand. .... ...Opp. Party

**CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND**

For the Petitioners : Mr. Abhishek Kumar Dubey, Advocate

For the Opp. Party : Mr. Kundan Kumar Ambastha, Advocate

**Order No. 04/ dated 14.11.2024**

Heard leaned Counsel for the parties.

2. By way of this C.M.P. the order dated 01.12.2023 has been assailed.

3. The learned Counsel for the petitioners has submitted that the Original Suit No. 56 of 2022 was instituted on behalf of the plaintiff-Balram Mahato against Kiran Devi Tulsiyan and Arun Kumar Sanganeria who are petitioners herein in which the relief for cancellation of sale-deed executed by defendant No.1 in favour of wife of defendant No.2 was sought and also the relief for permanent injunction in regard to the property in suit against the defendant was also sought.

4. It is also further submitted in that suit after completion of pleading of both the parties, the evidence of both the parties have been concluded. At the stage of argument an application was moved on behalf of the plaintiff under Order 6 Rule 17 of C.P.C. in which the amendment was sought to this effect that in place of Dalgovind Mahato name of Chutu Mahato be allowed to be written and in prayer clause it was also sought that if any previous sale-deed has been executed being in contravention of Section 46(1) (b) of the C.N.T. Act. also sought to be added. This amendment partly vague as no date of the sale-deed and particulars thereof is mentioned which are sought to be cancelled by way of amendment and so far as the deletion of the name of Dalgovind and in whose place the name Chutu is sought to be added, it would also prejudice the very rights of the petitioner/defendant which had accrued to him after conclusion of the evidence. As such the impugned order passed by the learned court-below is based on the perverse finding. It is also further submitted that since in revenue records the name of Chutu is shown, therefore, he wants to add the name of Chutu in his plaint in place of Dalgovind.

5. The learned Counsel for the Opposite Party/plaintiff opposed the contentions made by the learned Counsel for the petitioner and contended that the plaintiff has sought relief for cancellation of any those previous sale-deeds which were

executed in contravention of Section 46 (1) (b) of the C.N.T. Act though he has not given the details of them as it would prejudice his right.

6. The copy of the plaint of Original Suit No. 56 of 2022 is Annexure No.1 of this C.M.P. From the bare perusal of this plaint, it is found that this suit was filed on behalf of the plaintiff/Opp. Party Balram Mahato with these averments that the property in question initially belonged to Hargovind Mahato whose name was also recorded in record of rights in last survey settlement finally published in 1964 and after his death this very property in suit devolved upon Amrit Mahato and after death of Amrit Mahato the property of suit devolved upon the plaintiff Balram Mahato being the successor and legal heir of Amrit Mahato.

6.1 It has also been specifically averred that initially the property was in ownership and possession of Dalgovind Mahato and after his death the father of plaintiff and after the death of his father the plaintiffs are in ownership and possession of the same and the sale-deed which is sought to have been cancelled by seeking the prayer in the plaint is stated to be executed by defendant No.1 in favour of the wife of defendant No.2 without any authority being in contravention of the provisions of Section 46(1) (b) of the C.N.T. Act.

7. In the Original Suit, written statement was also filed on behalf of defendants who are petitioners herein, the copy of the same is Annexure No.2 of this C.M.P.

8. Admittedly, in the Original Suit No. 56 of 2022 after completion of pleading of parties, the issues were framed and evidence of both the parties have been concluded and the suit was at the stage of argument. At that stage an application was moved on behalf of the plaintiff Balram Mahato for amendment in the plaint with these averments that in para 4 of the plaint after the 'word' grand-father "Dalgovind" is to be deleted and in its place "Chutu" is to be inserted and further this amendment was also sought that in prayer portion of para 15 (i) of the plaint in line No.4 that any such previous sale-deed if executed and registered in contravention of Section 46(1) (b) of the C.N.T. Act shall be declared as "are to be inserted by way of amendment". Along with these two amendments one more amendment was sought that in para 2 of the plaint after the word Dalgovind Mahato and before the word stands, the words "and others" and in para 3 of the plaint after the words Dalgovind Mahato and before the words "died issueless and Late Chutu Mahato" were sought to be inserted.

9. The plea which is raised on behalf of the defendants, petitioners herein, is that by way of proposed amendment, the very nature of the plaint case is changed. Moreover, the

defendants, who are petitioners herein, their rights are highly prejudiced as the evidence has been concluded, the contrary conclusions which were drawn on behalf of defendants in cross-examination from plaintiff and his witnesses the same are being adversely affected if this amendment is allowed.

10. In the plaint itself the plaintiff has shown his right to have been derived from his grand-father Dalgovind Mahato as Dalgovind Mahato has shown to be the owner and in possession of the land in question and after his death, his son Amrit Mahato and after the death of Amrit Mahato, the plaintiff being the legal heirs son of Amrit Mahato became the owner and in possession of the land in question.

10.1 Now by way of amendment, the plaintiff wants to change the plaint case in toto seeking to amend the plaint that Hargovind Mahato died issueless and further in another para the name of Dalgovind Mahato is also sought to be deleted and in its place the name of Chutu is sought to be added. **From this proposed amendment the very nature of the plaint and the very source of the title which the plaintiffs have averred to have been derived this property in suit is altogether changed that too after conclusion of evidence of both the parties. It would certainly prejudice to the rights and interest of the defendant which have accrued to them after conclusion of the evidence in the suit in question.**

10.2 **It is the settled law that no amendment can be allowed in the pleadings if the nature of the plaint or the nature of the defence case is altogether changed. It is also the settled law that if by way of amendment the very rights of the defendant which had accrued to him are being prejudiced that amendment cannot be allowed.**

10.3 Further by way of amendment the plaintiff has also sought in the prayer clause the cancellation of any previous sale-deed which if any executed in contravention of Section 46(1) (b) of the C.N.T. Act. By way of this amendment the plaintiff in the Amendment Application itself has not given any details of those previous sale-deed which he seeks to be cancelled by way of this amendment. **Neither the date of those sale-deeds nor the particulars have been given by whom those sale-deeds were executed and in whose favour. As such this amendment also being very vague and general in nature which is being sought in the prayer itself cannot be permitted because unless and until there are the specific date of those previous sale-deed which are sought to be cancelled, the relief for cancellation of the same whether is time barred or not cannot be ascertained.**

11. In view of the above, the impugned order passed by the learned court-below is based on perverse finding ignoring the very settled law in regard to the amendment to be sought in the pleadings that such amendment cannot be allowed by

which the very nature of the suit of the plaintiff is changed and also ignored this fact that it would also cause the prejudice to the defendant. As such the impugned order needs interference and this C.M.P. deserves to be allowed.

12. This C.M.P. is hereby allowed. The impugned order dated 01.12.2023 passed by the learned Civil Judge, Junior Division-I, Seraikella in Original Suit No. 56 of 2022 is set aside.

13. Let the learned court-below be communicated in regard to the order.

**(Subhash Chand, J.)**

P.K.S./A.F.R.