

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11032 of 2010

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Rajendra Bhagat son of Late Singhasan Bhagat resident of Village- Sahalour, P.S.- Pachrukhi, District- Siwan

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Bihar, Patna
 2. Suraj Bhagat son of Late Singhasan Bhagat
 3. Sandeep Kumar son of Suraj Bhagat
 4. Ajay Kumar Bhagat son of Late Ram Subhag Bhagat
 5. Arjun Bhagat son of Late Ram Subhag Bhagat
 6. Keshaw Prasad son of Late Ram Subhag Bhagat
 7. Ganesh Bhagat son of Late Singhasan Bhagat
 8. Kameshwar Bhagat son of Late Rajbali Bhagat
 9. Ramesh Bhagat son of Late Rajbali Bhagat
- Respondent no. 2 to 9 are resident of village- Sahalaur, P.O.- Sahalaur, P.S.- Pachrukhi, District - Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagdish Prasad
Mr. Raju Prasad

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 29-07-2015 Learned counsel who has appeared on behalf of the respondent no. 2 and 3 intends to file counter affidavit. It may be filed in Registry.

Heard Sri Jagdish Prasad, learned counsel, who was assisted by Sri Raju Prasad, learned counsel for the petitioner, learned counsel for the private respondents and learned AC to AAG-II.

The petitioner/ defendant / appellant has approached this court with a prayer to quash an order dated 14.5.2010 passed



by learned A.D.J.- cum- F.T.C. -Ist, Siwan in Title Appeal No. 29 of 2000. By the said order the learned court below has rejected the petition filed on behalf of the petitioner under Order XLI Rule 27 of the C.P.C. By the said petition petitioner wanted to bring on record a deed of gift as additional evidence. The prayer was rejected by the court below which has been assailed by the petitioner in the present writ petition.

Learned counsel for the petitioner submits that it was a partition case which was decided against the petitioner and others and thereafter, Appeal was preferred. He submits that in respect of the suit property one deed of gift was executed by the mother i.e. Most. Basmati Kuar. Since it was not earlier available, it could not be produced during the trial and subsequently, a petition was filed for getting the same document exhibited under Order XLI Rule 27 of the C.P.C.

Learned counsel for the respondents has vehemently opposed the prayer of the petitioner. He submits that the order passed by the court below is in accordance with the provisions contained in Order XLI Rule 27 C.P.C.

On perusal of the impugned order and the materials available on record the court is of the opinion that it is not the case of the petitioner that during the trial before the court below

any prayer was made by the petitioner for getting the said document exhibited and it was refused by the trial court, nor any elaborate fact has been disclosed in the petition filed by the petitioner before the lower appellate court explaining as to whether the petitioner had taken due diligence to get such documents exhibited earlier and how he was prevented from producing the same. On perusal of the order impugned, the court is satisfied that since both the conditions imposed under Order XLI Rule 27 of the C.P.C. were not satisfied by the petitioner, the learned court below has rightly rejected the same. There is no reason for interference with the impugned order.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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