

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20264 of 2010

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Indradeo Tiwari S/O Late Balli Tiwari R/O Vill.-Birwa, P.O.Birwa,
P.S.Majholia, Distt.-West Champaran.

.... Petitioner/s

Versus

1. Lal Bachan Tiwari S/O Late Balit Tiwari R/O Vill.-Birwa, P.O.Birwa,
P.S.Majholia, Distt.-West Champaran.
2. Gauri Tiwari S/O Late Balit Tiwari R/O Vill.-Birwa, P.O.Birwa,
P.S.Majholia, Distt.-West Champaran.
3. Mankeshwar Tiwari S/O Indradeo Tiwari R/O Vill.-Birwa, P.O.Birwa,
P.S.Majholia, Distt.-West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.M. Shabbir Alam

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

2 10-08-2015 Heard Mr. Thakur for the petitioner.

The present writ application has been filed challenging the correctness of the order dated 23.01.2008 passed by the trial court in T.S. No. 16 of 1998 which was filed for declaring the deed of gift dated 30.09.1996 executed by one Brahamdeo Tiwari who died issueless in favour of defendant/respondent no.3 as forged and fabricated.

It appears that two documents relating to the death of Brahamdeo Tiwari, one issued by M.J.K. Hospital and another by Gram Sewak were filed on behalf of the plaintiff(s) in the year 2002. Both the documents filed earlier could not be marked as Exhibits. The case proceeded. At the time of hearing of the suit



an application (Annexure-2) was filed for marking them as Exhibits. The submission is that those documents are the public documents and compatible with the case of the plaintiff(s). The same was objected by the defendant(s) by filing a rejoinder. The trial court in the order found that those documents were the public documents and were already on record but could not be marked as Exhibits. In view of aforesaid, for proper resolution of the disputes between the parties the same were allowed to be marked as Exts. 1 and 1/A respectively.

Mr. Thakur while arguing in support of the application has referred to Order 7 Rule 14 CPC in order to contend that the documents were required to be filed along with the pleadings which, in the present case, have not been done. The marking of the exhibits shall prejudice.

The case of the defendant(s) is that Brahamdeo Tiwari died few days after execution of the deed of gift i.e. on 30.09.1996.

Indisputably, the two documents were filed by the plaintiff(s) in the year 2002. It appears that by mistake those documents could not be marked as Exhibits. The case of the plaintiff(s) is that Brahamdeo Tiwari died prior to execution of the deed of gift and, as such, a relief was sought in the suit for

declaration of the said deed of gift as forged, fabricated and null and void. Having found so the trial court permitted the plaintiff(s) to mark those documents as Exhibits as they were public documents.

In my view, the order passed by the trial court which has been assailed in the writ application does not suffer from any serious or patent illegality meriting interference by invocation of discretionary writ jurisdiction of this Court under Article 227 of the Constitution of India.

The application fails and is dismissed.

It is clarified that once the documents are exhibited, the defendant(s) shall have opportunity to make submission thereagainst including filing appropriate application for summoning of the witnesses. If any such application is filed the same shall receive due consideration of the trial court.

(Kishore Kumar Mandal, J)

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