

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2460 of 2011

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1. Ramashish Singh S/O Late Srichand Mahto @ Shricharan Singh R/O Village- Fatehpur, Kamali P.O. & P.S.- Mahnar, District- Vaishali

.... Petitioner/s

Versus

1. Yogendra Singh S/O Late Baleshwar Singh R/O Village- Fatehpur - Kamali, P.O. & P.S.- Mahnar, District- Vaishali, Presently Residing At Mohalla- Balariya, P.O.- Ranipatra, P.S. & District- Purnea
2. Jawahar Singh S/O Late Baleshwar Singh R/O Village- Fatehpur - Kamali, P.O. & P.S.- Mahnar, District- Vaishali, Presently Residing At Mohalla- Balariya, P.O.- Ranipatra, P.S. & District- Purnea
3. Nirpat Singh @ Narayan Singh S/O Late Jamun Singh R/O Village- Fatehpur, Kamali, P.O. & P.S.- Mohnar, District- Vaishali
4. Arjun Singh S/O Late Jamun Singh R/O Village- Fatehpur, Kamali, P.O. & P.S.- Mohnar, District- Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nirmal Kumar Sinha-3

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 14-08-2015

Heard Mr. Yogendra Prasad Sinha, counsel for the petitioner.

Plaintiff of Title Suit No. 426 of 2002 has filed the present application aggrieved by the order dated 07.04.2010 passed by the Sub-Judge, Vaishali. By the said order two applications filed on 15.02.2010 by the petitioner was considered and rejected. The suit was filed for declaration of title over the suit land recorded as Plot Nos. 525, 526 and 563 in the revisional survey. The evidence of the parties was closed. The petitioner sought CS Khatian of Plot No. 976,



977 and 775 out of which the RS plots of the suit land were carved out to be exhibited. From the report submitted by the Survey Knowing Pleader Commissioner as also the comparative land details prepared by the Commissioner, it has been submitted that these two documents were already filed and on record but after framing of the issue the trial Court considering the stage of the case, did not allow those applications as the same would delay disposal of the suit.

Learned counsel for the petitioner submits that certified copy of the C.S Khata is public document which can be marked as exhibit even with or without objection. Similarly the report which was submitted by the Commissioner ought to have also been marked as the Commissioner was examined in the case as P.W. 2. By mistake the same was not marked.

No one has appeared on behalf of the defendant.

In my view, the Khatian being public document should have been allowed to be marked either with or without objection by the Court in order to do justice between the parties. The report of the Survey Knowing Pleader Commissioner in view of the fact that Commissioner was examined, should have also been allowed to be exhibited particularly when some of the document filed by the defendant subsequent to framing of the issues are said to have been admitted in evidence. The application is accordingly allowed. If the

petitioner is required to re-examine the P.W.2, the court will on appropriate application grant one indulgence on payment of appropriate cost in favour of the defendant.

Writ application is accordingly allowed. The order dated 07.04.2010 passed by Sub-Judge 5th Vaishali at Hazipur is hereby quashed.

(Kishore Kumar Mandal, J)

Prakash/-

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