

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6205 of 2011

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1. Mostt.Pyari Devi @ Pyari Devi Widow Of Late Mahangu Bin Resident Of Village- Jamunia, P.S. Bathwariya, P.O. Chandraha, District- West Champaran
 2. Tulsı Bin son of Late Mahangu Bin Resident Of Village- Jamunia, P.S. Bathwariya, P.O. Chandraha, District- West Champaran
 3. Lalchan Bin son of Late Mahangu Bin Resident Of Village- Jamunia, P.S. Bathwariya, P.O. Chandraha, District- West Champaran
 4. Kapildeo Bin son of Late Mahangu Bin Resident Of Village- Jamunia, P.S. Bathwariya, P.O. Chandraha, District- West Champaran
 5. Lal Bahadur Bin son of Late Mahangu Bin Resident Of Village- Jamunia, P.S. Bathwariya, P.O. Chandraha, District- West Champaran

.... Petitioners

Versus

1. Gulabi Devi W/O Sri Jogendra Yadav Resident Of Village- Bathwariya, P.S. Bathwariya, P.O. Chandraha, District- West Champaran
2. Ganga Bin Resident Of Village- Jamunia, P.S. Bathwariya, P.O. Chandraha, District- West Champaran
3. Bishun Bin son of Bhuwali Bin Resident Of Village- Jamunia, P.S. Bathwariya, P.O. Chandraha, District- West Champaran
4. Mostt. Lakhpati Kunwar Widow Of Late Mohan Bin Resident Of Village- Jamunia, P.S. Bathwariya, P.O. Chandraha, District- West Champaran

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Advocate.

For the Respondent/s : Mr. Zainul Abedin, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 11-09-2015

Heard Mr. Ganpati Trivedi for the petitioners and Mr.
Zainul Abedin for the respondents.

The plaintiffs of Title suit no. 10 of 2013 have filed the
present petition under Article 227 of the Constitution of India
aggrieved by the order dated 06.05.2009 passed by the leaned Sub
Judge II, Bagaha (West Champaran) rejecting the petition dated
30.04.2009 filed by the plaintiffs to permit them to mark Exhibit the



certified copy of the registered sale deed dated 26.09.2002. The plaintiffs in the suit sought declaration of the said sale deed executed by the defendant nos. 2, 3 and 4 in favour of the defendant no.1 as fraudulent /showy/inoperative. The said application was rejected on the ground that the copy thereof was not enclosed by the plaintiffs along with the plaint. Another reason assigned by the trial Court is that such application was filed at a much belated stage when the evidence of both sides was already adduced. The Court also took notice of the fact that the sale deed was already marked as Exhibit A on behalf of the defendants.

Counsel for the petitioners, while assailing the order, submits that the trial Court committed an error of record. He refers in this regard to the averments made in paragraph nos. 8,16 and 17 of the writ petition wherefrom it appears that the petitioners had enclosed the certified copy of the sale deed along with the plaint. Secondly, it has been submitted that the suit itself was filed for annulling the sale deed. If same is not permitted to mark Exhibit an injustice of grave nature shall occasion and the cause of justice shall suffer. In so far as the difficulty in marking the said document as Exhibit he has relied on **2014(3) PLJR 121 Umashankar Singh & Anr. vs. Keshwa Singh and ors.** in order to contend that certified copy of the registered document can be exhibited even without



formal prove by a witness. This Court would not presently go into that aspect of the matter. The counsel for the respondents, while opposing the application, has pointed out that there is unexplained delay on the part of the plaintiffs in approaching the Court as the order was passed on 6.5.2009 whereas the writ petition was lodged in 2011. Counsel for the petitioners has explained the delay by submitting that initially a Civil Revision application was presented in this Court in the year 2009 which was later converted into writ petition.

On a consideration of the rival submissions what appears to this Court is that trial Court committed an error of record while considering the claim of the petitioners raised through application dated 30.4.2009. The Code of Civil Procedure after amendment requires the documents forming basis of suit to be enclosed along with the plaint. It has been categorically stated that copy of the sale deed dated 26.9.2002 was enclosed along with the plaint. The suit itself has been filed for avoiding or declaring the sale deed dated 26.9.2002 as inoperative/fraudulent. The plaintiffs have to stand on their own leg. In not getting the certified copy of sale deed exhibited may severely affect the case of the plaintiffs. The ends of justice, in the facts and circumstances of the case, demand that the plaintiffs must be given an opportunity to exhibit the certified copy of the sale deed for which the

suit was filed. The law which has been explained in the case of **Umashankar Singh** shall be placed by the plaintiffs in the Court below in order to get the certified copy of the sale deed exhibited.

The application is allowed. The order dated 06.05.2009 passed by the Sub Judge-II, Bagaha, West Champaran, in Title Suit no. 10 of 2003 is set aside. There shall be no order as to costs.

(Kishore Kumar Mandal, J)

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