

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3223 of 2011

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1. Prabha Devi W/O Late Jagdish Prasad Resident Of Village - Saidanpur,
P.O. & P.S. Hilsa, District- Nalanda

.... Defendant/Respondent-Petitioner
Versus

1. Ramjee Prasad S/O Garabhu Mahto Resident Of Village - Saidanpur,
P.O. & P.S. Hilsa, District – Nalanda

... Plaintiff/Appellant-Respondent 1st set.

2. Sanjeev Kumar Son Of Late Jagdish Prasad Resident Of Village -
Saidanpur, P.O. & P.S. Hilsa, District - Nalanda

3. Sunita Sinha Daughter Of Late Jagdish Prasad Resident Of Village -
Saidanpur, P.O. & P.S. Hilsa, District - Nalanda

4. Sujata Kumari Daughter Of Late Jagdish Prasad Resident Of Village -
Saidanpur, P.O. & P.S. Hilsa, District - Nalanda

5. Archana Kumari Daughter Of Late Jagdish Prasad Resident Of Village -
Saidanpur, P.O. & P.S. Hilsa, District - Nalanda

6. Sunaina Kumari Daughter Of Late Jagdish Prasad Resident Of Village -
Saidanpur, P.O. & P.S. Hilsa, District - Nalanda

....Defendants/Respondents- Respondents 2nd set.

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Appearance :

For the Petitioner : Mr. Sudhir Kumar

For the Respondents : Mr. Santosh Kumar Sinha-2

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 18-08-2015 Heard Mr. Sudhir Kumar in support of the writ
application and Mr. Sinha for the contesting respondent No.1.

The defendant-respondent of Title Appeal no. 41 of
2007 has filed the writ application to challenge the
legality/correctness of the order dated 23.11.2010 passed by the
1st Additional District Judge, Nalanda at Biharsharif whereby the
application dated 19.11.2010 filed by the appellant under order 41
Rule 27 of the Code of Civil Procedure (for short the Code') was
allowed. The sale deeds produced during the trial were allowed to
be marked as Exhibits subject to the payment of cost.

The plaintiff-respondent filed the suit for partition and also for a declaration that the registered deed of gift dated 15.06.1990 executed by the defendant 1st set in favour of the defendant 2nd set be declared inoperative/void. The plaintiff claimed himself to be the adopted son of Garbhu Mahto. The documents which are now sought to be exhibited were filed in the suit. The trial court, finding no relevancy thereof, refused to mark them Exhibits. The suit of the plaintiff-respondent was dismissed. Aggrieved thereby the appeal was preferred wherein the application dated 19.11.2010 was filed for production of additional evidence. Upon hearing both sides, the same was allowed. The appellate court took the view that the sale deeds and other documents were filed by the plaintiff in the suit to demonstrate that he was the adopted son of Garbhu Mahto. The trial court erroneously did not allow those documents to be exhibited on the ground that the land covered by those sale deeds did not relate to the suit land. This was considered by the appellate court as refusing.

Mr. Kumar submitted that it was not refusal by the trial court. None of the conditions contemplated under Order 41 Rule 27 is satisfied to enable the appellate court to allow such application. Mr. Sinha, on the other hand, submitted that if any document is produced and the court refused to take the same into evidence and mark those documents as exhibits it would

necessarily mean refusal thereof. The reasoning of the appellate court in allowing the application therefore are not perverse.

I have considered the rival submissions of the parties. The sale deeds were brought on the record at the trial by the plaintiff in order to demonstrate/prove that the plaintiff was non other than the adopted son of Garbhu Mahto. The trial court erroneously did not allow those documents to be marked as Exhibits on the ground that the suit land covered by those sale deeds did not tally with the subject land. This, in the opinion of the court, was refusal. In such view of the matter, in the opinion of this court the appellate court has not committed any patent illegality meriting interference by this court under the supervisory jurisdiction under Article 227 of the Constitution of India. This court would further note that the appellate court in the impugned order itself has imposed condition safeguarding the interest of the defendant. No serious prejudice, therefore, has been caused to any party.

The application fails. Dismissed.

(Kishore Kumar Mandal, J)

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