

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20695 of 2012

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1. Sudama Devi D/O Late Dhanraj Bhagat And Wife Of Hari Narayan Pd Resident Of Village - Chandparha, P.S. Minapore, P.O. Mustafaganj, District - Muzaffarpur
 2. Fudeni Devi D/O Dhanraj Bhagat And Wife Of Mahendra Pd Resident Of Village Sirauli, P.O. Gheghwa, P.S. Madhuban, District - East Champaran

.... Petitioner/s

Versus

1. Shri Ganesh Pd. Son Of Late Nirsan Bhagat Resident Of Village And P.O. Mustfaqunj, East Muzaffarpur, District - Muzaffarpur
2. Hari Shanker Pd. Son Of Late Tej Nr. Pd. Resident Of Village And P.O. Mustfaqunj, East Muzaffarpur, District - Muzaffarpur
3. Shashi Ranjan Kumar Son Of Late Tej Nr. Pd. Resident Of Village And P.O. Mustfaqunj, East Muzaffarpur, District - Muzaffarpur
4. Rahul Kumar Son Of Late Tej Nr. Pd. Resident Of Village And P.O. Mustfaqunj, East Muzaffarpur, District - Muzaffarpur
5. Most. Sushila Devi W/O Late Tej Narayan Pd. Resident Of Village And P.O. Mustfaqunj, East Muzaffarpur, District - Muzaffarpur
6. Archana Kumari D/O Late Tej Naraya Pd. Resident Of Village And P.O. Mustfaqunj, East Muzaffarpur, District - Muzaffarpur
7. Neelam Kumari W/O Shankar Pd, D/O Late Tej Narayan Resident Of Village Sirauli, P.O. Gheghwa, P.S. Madhuban, District - Muzaffarpur
8. Subodh Kumar @ Anil Kr. H/O Late Poonam Kumari, Son Of Lakshman Pd. Resident Of Village Kothia, Via Teterwa Kothi, P.S. Madhuban, East Champaran

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ashok Kumar Sinha, Adv.
Mr. Shyam Sunder Pandey, Adv.
For the Respondent/s : Mr. Arun Kumar Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 22-12-2015 Heard learned counsel for the petitioners as well as learned counsel for the respondents.

2. Gone through the order impugned. By the order impugned prayer of the petitioners/plaintiffs advanced through petition dated 12.05.2010 in rebuttal of the evidence having adduced on behalf of respondents/defendants has been declined.

3. Before coming to controversial point having subject to adjudication at the present moment under instant petition, facts of the case in brevity has to be taken into account.

Title Suit No.39 of 1998 has been filed on behalf of petitioners/plaintiffs having a relief that the deed of gift executed by Dhanraj happens to be a forged document and is not binding upon the plaintiff including other ancillary relief connected thereto relating to land covered under aforesaid deed of gift which has properly been answered by the defendant. Furthermore, there happens to be specific plea in the written statement stressing upon genuineness of the document. On the pleading of the rival parties issues were framed and parties began to lead evidence. After closure of evidence of plaintiff, defendant began to adduce his evidence and during course thereof, on a prayer made on behalf of defendant, the document was subjected to handwriting expert and accordingly, the report has also been made available an exhibit. After examining all the relevant witnesses, the defendants also closed his case.

During midst thereof, another set of litigation cropped up. Relating to opinion of the handwriting expert, which was brought up on record subsequently, having the prayer of defendant allowed vide order dated 03.05.2005. At that very moment, the prayer of the plaintiff regarding allowing him to



produce evidence in rebuttal was rejected in the background of the fact that case of the plaintiff was closed on his prayer alone and further, then thereafter the defendant has been directed to adduce evidence. Against the aforesaid order C.R. No.1474 of 2005 was filed by the petitioners/plaintiffs which was rejected vide order dated 14.11.2005 taking into account the pleading of the written statement. Civil Review No.259 of 2005 was filed which met with similar fate vide order dated 23.07.2008 (Annexure-2)

4. While the aforesaid turmoil was allowed to persist, the document in question that means to say the alleged deed dated 18.01.1984 having executed by Dhanraj was examined by the handwriting expert and his opinion on that very score has been filed by the respondents/defendants whereupon that handwriting expert has also been examined and the part is an exhibit. Petitioners/plaintiffs renewed his prayer for allowing him to give evidence in rebuttal which has been rejected by the order impugned dated 05.06.2012 by the learned court of Executive Magistrate, Muzaffarpur in Title Suit No.39 of 1998 hence arose a cause for filing of instant petition.

5. Admittedly, instant suit happens to be of the year 1998 at which time the old CPC was in operation. Hon'ble Apex Court by its successive judicial pronouncement has held that amended CPC had got no retrospective effect and on account

thereof, the provisions of old CPC will be applicable. For reference (2007) 1 SCC 765, (2009) 12 SCC 324, (2015) 4 SCC 33.

6. For better appreciation of the dispute the relevant provisions of the old CPC as well as amended CPC is being discussed.

7. To shorten the litigation as well as to prevent abuse of process of the court coupled with prevention of manipulation, maneuvering, preparation of forged and fabricated document an embargo has been put whereunder, the plaintiff has been put under obligation under Order-VII, Rule-14 of the CPC to annex those documents whereupon plaintiff relies at the time of filing of plaint itself though in certain circumstances, the aforesaid condition has been allowed to relax with the permission of the court. In likewise manner the defendant has also been under obligation to annex the document at the time of filing of written statement along with similar kind of relaxation as provided under Order-VIII Rule-1A of the CPC. Therefore, from plain reading of both the provisions it is apparent that in ordinary course of nature, the document has to be filed at an initial stage and the purpose for the same happens to be that both parties should know about the documents of the either of the parties in order to protect their interest. At the present moment, Order-XIII Rule-1 is also to be looked into whereunder

there happens to be mandate to have the document produced on or before the settlement of issue in original of which, copies happens to be along with plaint as well as W.S.

8. Thus, the relevant provisions as referred above clearly speaks with regard to mode of filing of document and further, recognize the stages.

9. In likewise manner in the old CPC Order-VII Rule-14 contains the provision whereunder plaintiffs is under obligation to produce the document at the time of presentation of suit and further, it is also expected to annex a list containing reference of other documents which could be relied by him during course of trial. Order-VII Rule-18 debars the plaintiff to file documents subsequently which has not been filed along with plaint however could be filed after obtaining leave of the court.

In likewise manner Order-VIII Rule-8A directs the defendant to submit document along with his WS and in case is not filed would be entertainable only after having leave of the court. Order-XIII also deals with situation in similar way and further, sub-rule (2) prescribes some sort of clutches on that score.

10. From parallel scrutiny of the aforesaid provisions under new (amended) as well as old CPC, it is apparent that parties who utmost care during course of filing of plaint as well as WS to have the document annexed therewith which happens to be

their lifeline.

11. Now coming to the present episode, it is apparent that the plaintiff had challenged the deed of gift dated 18.01.1984 executed by Dhanraj and on account thereof, shared burden of proof in terms of Section 101 to 103 of the Evidence Act and in case is found duly discharged, then the onus shifts upon defendant. Discharge of burden of proof is mandatory and that has to be shared by the person who comes to court to have a finding in his favour. Therefore, it was incumbent upon the plaintiff to have used all kinds of tools having in his possession to demonstrate that the alleged deed of gift dated 18.01.1984 is forged and fabricated. Furthermore, for that purpose he would have privilege of praying before the court either calling for the register from the registration office or directing the defendant, who was admittedly in possession of original deed to produce the same so that he able to proper examination by an expert. However, petitioners/plaintiffs failed on that very score and the reason is immaterial to discuss.

12. Admittedly, when the document were filed on behalf of respondents/defendants, certainly at that very moment the handwriting expert's report was not available as, the document was examined during intermediary period with the permission of the court and further, the handwriting expert was examined. Then in that event, the aforesaid evidence was brought up on surprise

regarding which, there was no opportunity available before the petitioners/plaintiffs to rebut or to explain or to counter met. Therefore, denial of opportunity, to counter happens to be against the spirit of law as, the relevant provisions as discussed above directs the parties to file document at the time of filing of plaint as well as written statement itself so that document should not come by way of surprise. However, there happens to be laches on the part of the petitioners/plaintiffs while conducting its case. Furthermore, it is apparent that the case of the defendant had already been closed and now the case is fixed for argument.

13. Considering the deficiency persisting in the order impugned by which the prayer of the petitioners/plaintiffs has been rejected by the order impugned, the same is set aside. Petition is allowed but considering the conduct of the petitioners/plaintiffs as well as suit being of year 1998 at a cost of Rs.25,000/-.

(Aditya Kumar Trivedi, J.)

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