

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19814 of 2010

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1. Ram Naresh Singh S/O Late Khaderan Singh R/O Vill.- Kandap, P.O.- Kandap, P.S.- Gaurichak, Distt.- Patna
 2. Chandra Kumar Singh @ Rajdeo Singh S/O Late Khaderan Singh R/O Vill.- Kandap, P.O.- Kandap, P.S.- Gaurichak, Distt.- Patna
 3. Indradeo Singh S/O Late Khaderan Singh R/O Vill.- Kandap, P.O.- Kandap, P.S.- Gaurichak, Distt.- Patna

.... Petitioners

Versus

1. Smt. Indu Devi D/O Late Mundrika Singh, W/O Ganesh Prasad Singh R/O Vill.- Kandap, P.O.- Kandap, P.S.- Gaurichak, Distt.- Patna, At Present R/O Vill.- Masarh, P.S.- Udwanthnagar, Distt.- Bhojpur at Ara

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Devendra Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

3 06-08-2015 Heard counsel for the petitioners and the State.

Plaintiff-respondent filed the Title Partition Suit No. 481 of 2003 for partition. In the said suit the defendants were debarred from filing written statement by order dated 10.2.2005. Again, it appears, a prayer was made for allowing the defendants to file written statement which was considered and rejected by order dated 7.9.2005.

It is the submission of the respondent that against the aforesaid order, the defendants-petitioners filed a civil revision application in this court which was dismissed on 10.1.2007. This being the factual background a petition was filed by the



defendants-petitioners on 10.08.2010 under Order-VIII, Rule 1 of the CPC and also under Section 151 of the CPC seeking to exhibit the deed of ladavi which was executed by the plaintiff before filing of the suit in favour of the defendants. A rejoinder thereto was filed on 17.8.2010. The learned Sub -Judge X, Patna on a consideration of the submissions of the parties by order dated 5.10.2010 rejected the same noticing that in the case at hand the defendants was not permitted to file written statement. The Court has taken note of the provisions of Order-VIII, Rule 1-A(iii) of the CPC which reads as under:-

“Where a document or a copy thereof is not filed with the written statement under this rule, it shall not be allowed to be received in evidence on behalf of the defendant at the hearing of the suit.”

Learned counsel for the petitioners in support of his contention has relied on **Sri Mehta Vishwanath vs. Smt. Chanchal Devi 2012(1) PLJR 62** wherein a learned judge of this Court held that for proper appreciation of the controversy when the documents are sought to be produced at the trial, before the arguments are completed, normally they may be received, and opportunity be given to prove them and rebuttal if any and their relevance and effect they may have, be considered in deciding the issues arising in controversy.

There is no dispute about the principle of law laid down therein which has drawn sustenance from a Division Bench of this Court in the case of **Sarbanand Paswan vs. Mahendra Prasad Singh & Ors, 1999(1) PLJR 118**. The case of the petitioners, however, is architecturally different. In the case which has been relied by the petitioners, the defendants were allowed to contest the case by filing written statement. In the case at hand at least on two occasions the prayer of the defendants to contest the case by filing written statement was /were denied. The second order passed by the court was unsuccessfully challenged by the petitioners in this Court, as noticed above. In this backdrop, in my view, the reasoning of the trial Court in denying the relief prayed for in the application dated 10.8.2010 cannot be faulted and that too in exercise of general power of superintendence vested in this Court under Article 227 of the Constitution. The writ application fails.

It is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

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