

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4074 of 2014

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1. Krishna Devi Wife Of Ram Udar Singh Resident Of Madhurapur, P.O. Teghra, S.D. Teghra, District - Begusarai
 2. Upendra Choudhary
 3. Umesh Choudhary Both Sons Of Late Jitendra Choudhary Resident Of Village - Rashalpur, Pragana Naipur, District - Begusarai
 4. Partha Devi @ Partima Devi Wife Of Ram Chandra Kumar Resident Of Village - Jhamatia, P.S. Bachhawara, District - Begusarai
 5. Deo Rani Devi Wife Of Shree Gagandeo Rai Resident Of Village - Jokia, P.S. Bhagwanpur, District - Begusarai

.... Petitioner/s

Versus

1. Rajendra Choudhary Son Of Late Udit Choudhary
2. Ajay Kumar Choudhary
3. Bijay Kumar Choudhary Both Sons Of Rajendra Choudhary
4. Amar Kumar Choudhary Minor Son Of Rajendra Choudhary Under The Guardianship Of Rajendra Choudhary As Father Guardian And Next Friend All Resident Of Village Rashalpur, P.S. Naipur, District - Begusarai
5. Sunaina Devi Wife Of Sri Sanjay Kumar Resident Of Village - Jokia, P.S. Begusarai, District - Begusarai
6. Shree Niwas Choudhary Son Of Jai Narain Choudhary
7. Manoj Choudhary
8. Santosh Choudhary
9. Nirmal Choudhary Minor Sons Of Upendra Choudhary, Under The Guardianship Of Their Father
10. Surendra Choudhary Son Of Dinesh Choudhary
11. Sushil Choudhary Minor Of Surendra Choudhary Under The Guardian Ship Of His Father
12. Mahesh Choudhary
13. Ganesh Choudhary
14. Sunil Choudhary All Sons Of Sri Niwas Choudhary Resident Of Nos. 6 To 14 Are Resident Of Village Rashalpur, P.S. Naipur, District - Begusarai
15. Ramanuj Choudhary Son Of Late Laxami Choudhary
16. Prem Shankar Choudhary Son Of Ramanuj Choudhary
17. Sashikant Choudhary Son Of Late Babulal Choudhary Resident Of Village - Rasidpur, P.S. Bhagwanpur, District - Begusarai
18. Rajeshwar Choudhary Son Of Late Yaddu Choudhary Resident Of Village - Augan, P.S. Naipur, District - Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Kishore Prasad, Adv.
Mrs. Rekha Prasad, Adv.
Mr. Rohit Kishore Prasad, Adv.

For the Respondent Nos. 1 to 4, 15 and 16:- :Mr.W.Rahman, Adv.

For the Respondent nos. 6, 10 to 14:-Mr.Pankaj Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

10-09-2015

Heard Mr. Rajendra Kishore Prasad, the learned counsel appearing for the respondent-petitioners, Mr.W.Rahman, the learned counsel who has appeared for the appellant-respondent nos. 1 to 4, 15 and 16 and Mr. Pankaj Kumar Singh, the learned counsel appearing for the respondent nos.6 and 10 to 14.

At the outset, Mr.W.Rahman, the learned counsel for the appellant-respondents, has categorically submitted that for the purpose of hearing and disposal of the present application, the respondent no.1 to 4 and 15 to 16 who are the appellants in the court below are the only necessary and contesting parties and the respondent nos.17 and 18 who are purchasers from the petitioners are only proforma parties. It has been further submitted that the hearing and disposal of the writ application awaiting service of notice on respondent nos.17 and 18 would only delay the disposal of the appeal in the court below and this application may be heard in absence of respondent nos. 17 and 18 at the risk of these appellant-respondents.

The learned counsel for the petitioners, in his turn, has not taken the stand that the respondent nos.17 and 18 are



necessary parties for hearing and disposal of the writ application. However, without going into this controversy, this Court proceeds to hear and dispose of this writ application in view of the statement by the learned counsel for the appellant-respondents that they are the main contesting respondents in the present application as by the impugned order their prayer to adduce additional evidence has been allowed.

This application has been filed assailing the order passed under Order 41 Rule 27 C.P.C. accepting the prayer of the appellant-respondents to adduce additional evidence. There is no dispute that the suit for partition filed by the appellant-respondents was dismissed and the appeal has been filed against the said judgment and decree. During the pendency of the appeal, the appellants therein filed the petition praying for adducing certain documents which were original sale deed dated 25.09.1950, original patta dated 25.05.1950 and certified copy of the sale deed dated 29.12.1978 praying to adduce them as additional evidence. The learned court below by the impugned order after hearing the parties has allowed the said prayer and has also granted the opportunity to the respondents to lead evidence in rebuttal.

Mr. Prasad, the learned counsel for the writ



petitioners, who are defendant-respondents in appeal, has submitted that the impugned order is not sustainable in law as the learned appellate court below has failed to consider the delay in adducing those documents in evidence. It has been canvassed that those documents were well within the knowledge of the appellants and therefore due diligence on their part in bringing those documents in evidence is clearly wanting. It has, however, been not denied by the learned counsel that the right of rebuttal has been granted to the petitioners by the court below by the impugned order.

The learned counsel for the contesting respondents has submitted that the plaintiff-appellants are the junior member of the family and they had no knowledge of those documents during the pendency of the suit. It has further been submitted that the documents sought to be adduced in evidence are old documents relating to transaction of the family property and by their nature, they are crucial for determination of the real issue.

After considering the submissions and materials on record, it is manifest that the plaintiffs in the suit for partition have filed the appeal against the decree of dismissal of the suit. It is the case of the appellants that they are junior members of the

family and have no knowledge of the documents earlier. The documents, sought to be introduced in evidence are the original and certified copy of the sale-purchase transaction of the family property said to have done by the predecessors of the plaintiff and the defendants. From the rejoinder (Annexure-2) filed by the petitioners it appears that there is no denial of the existence of the documents. The appellate court below has scrutinized the relevancy of the documents and has also accepted the explanation furnished by the appellants for non-production of those documents in evidence during trial. This Court is not persuaded to interfere with the discretion exercised by the appellate court below in allowing the prayer of the appellants for adducing additional evidence granting right of rebuttal to the respondents.

The writ application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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