

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19714 of 2010

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1. Rabindra Nath Mishra
2. Devendra Nath Mishra both sons of Late Dhanushdhari Mishra, both residents of village Shokhara, P.O. and P.S. Phulwaria District Begusarai

.... Petitioner/s

Versus

1. Ramesh Mishra
2. Ghuran Mishra
3. Pulkit Mishra, all sons of Late Surat Lal Mishra All resident of Village- Shokhara, P.O. and P.S. Phulwaria, District- Begusarai
4. Mostt. Pancha Devi widow of Late Shobha Kant Mishra, resident of Village- Shokhara, P.O. and P.S. Phulwaria, District- Begusarai
5. Kedar Nath Mishra son of Late Dhanushdhari Mishra,
6. Bachchi Devi widow of late Mahendra Nath Mishra
7. Munna Mishra
8. Chetan Nath Mishra
9. Mritunjay Kumar Mishra all sons of Late Mahendra Nath Mishra
10. Rani Devi daughter of Late Mahendra Nath Mishra and wife of Pawan Mishra All residents of Village- Shokhara, P.O. and P.S. Phulwaria, District- Begusarai
11. Tarkeshwar Mishra son of Kusheshwar Mishra resident of village AND P.O. Barhiya, P.S. Lakhisarai, Distt. Munger now District Lakhisarai
12. Shanti Devi daughter of Late Dhanushdhari Mishra, wife of Prem Narain Pathak, resident of Village - Asinchak, P.O. and P.S.- Dalsinghsarai, District- Samastipur
13. Kanti Devi daughter of Late Dhanushdhari Mishra, wife of Sri Bagish Jha, resident of village- Mau, P.O. and P.S. Vidyapatinagar, District- Samastipur
14. Most. Parwati Devi W/o Late Kamala Kant Mishra
15. Shekhar Mishra S/o Late Kamala Kant Mishra
16. Jai Prakash Mishra S/o Late Kamala Kant Mishra
17. Balram Mishra S/o Late Kamala Kant Mishra
18. Durga Devi D/o Late Kamala Kant Mishra
19. Madhuri Devi D/o Late Kamala Kant Mishra
20. Choti Devi D/o Late Kamala Kant Mishra
21. Tekhi Devi D/o Late Kamala Kant Mishra All resident of Village- Shokhara, P.O. and P.S. Phulwaria, P.O.- Barauni, District- Begusarai

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SHYAMESHWAR DAYAL

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 10-08-2015

Heard Mr. Dayal in support of the writ petition which has been

filed challenging the correctness of the part of the order dated 7.9.2009 passed by the learned Munsif-II, Begusarai in Title Suit No. 139 of 1992. The Trial Court by the said order rejected the petition of the plaintiffs dated 8.9.2008 (Annexure-1) for permitting the plaintiffs to be examined in this case before proceeding further in the matter.

From the factual depiction of the case, it appears the suit was filed for declaration of title and confirmation of possession. The plaintiffs also prayed for declaring the deed of gift and sale deed null and void. The defendants appeared and contested the suit. The evidence of the plaintiff was closed on 16.7.2008. One witness of the defendants was thereafter examined. At this stage, Annexure-1 was filed on behalf of the plaintiffs for permitting them to be examined in the case which, owing to wrong legal advice of the counsel, could not be examined. The plaintiffs also sought recall of the solitary defence witness which was examined. A rejoinder thereto was filed by the defendants. The Trial Court allowed the prayer of the plaintiffs for recall of the defence witness for cross-examination but rejected the prayer for permitting the plaintiffs to be examined in this case.

Contention of Mr. Dayal is that for want of legal advice and the social status of the plaintiffs, the cause of justice should not be allowed to suffer. If such prayer is not allowed, a complete miscarriage of justice shall occur insofar as the case of the plaintiffs is

concerned. After all only the plaintiffs have to be examined who can be cross-examined by the defence. Thereafter, the defence can examine other witnesses. The plaintiffs will support the case made out in the plaint.

Counsel for the respondents 3rd set has not objected to such prayer. No one has appeared to oppose the said prayer on behalf of the defendant-respondent 1st set.

Taking into account the submissions advanced on behalf of the plaintiffs, in my view, the cause of justice shall be served if the plaintiffs are given an opportunity to examine themselves in the suit. Mr. Dayal has very fairly stated that only two dates shall be fixed by the Court for their examination which they will avail failing which the Court shall not grant further adjournment for their examinations.

Subject to deposit of cost in the sum of Rs. 600/- payable to the contesting defendant in the Court below, the writ application is allowed. The Trial Court shall fix two dates for examination of the plaintiff(s). If they fail to avail the indulgence, the Trial Court shall not be obliged to grant further adjournment and proceed further for disposal of the suit in accordance with law.

(Kishore Kumar Mandal, J)

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