

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19254 of 2014

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Nawal Kishore Prasad Singh

.... Petitioner/s

Versus

Yugeshwar Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Upendra Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 26-11-2015 **1.** In this writ application, interlocutory application No.3713 of 2015 has been filed by the petitioner. However, at the time of hearing of this interlocutory application, the learned counsel for the petitioner as well as learned counsel appearing on behalf of the respondent submitted that this writ application may be heard on merit in admission matter and the same may be disposed instead of hearing and disposing of the interlocutory application only. The learned counsel for the respondent submitted that he has also filed a rejoinder to the interlocutory application and in the rejoinder all the points mentioned in the writ application has also been covered. In view of the submission, this writ application is being disposed of at the admission stage itself after hearing the parties in admission matter.

2. This application under Article 227 of the Constitution of



India has been filed by the plaintiff petitioner against the order dated 02.08.2014 and 05.09.2014 passed by the learned Addl. Munsif, Sheikhpur in Title Suit No.3 of 2009 whereby the Court below rejected the application filed by the plaintiff petitioner for admitting one rent receipt as exhibits in the suit.

3. It appears that the plaintiff petitioner filed title suit No.3 of 2009 for declaration that the sale deed alleged to have been executed by the plaintiff petitioner in favour of the defendant respondents is forged, fabricated and created by the defendant by impersonating the plaintiff. Contesting written statement was filed by the defendant. Evidences were going on and at that stage, the application was filed by the petitioner for marking the said rent receipts as exhibit in the suit. By the impugned order, the Court below has rejected the same on the ground that the rent receipt do not bear the name, khata number etc.

4. The learned counsel for the petitioner submitted that on the date of rejection of the application, the plaintiffs evidences was going on and the plaintiff filed application praying for marking the rent receipt as exhibit in the suit which should have been allowed by the Court below but the learned Court below erroneously held that it does not bear the khata number or the name in whose favour

it has been granted although in the rent receipt, everything is there. Therefore, it was error apparent on the face of the record. The learned counsel further submitted that in fact the Court below could not have dealt with the evidences on merit at the stage of admitting the same in evidence.

5. On the other hand, the learned counsel appearing on behalf of the respondent submitted that the intention of the plaintiff is to linger the case and in fact in the application itself the plaintiff admitted that because of clerical mistake, the name or the number have not been mentioned.

6. Perused the impugned order. It appears that the Court below rejected the application filed by the petitioner for marking the rent receipt as exhibit on the ground that there is no name or khata- khasra number in the rent receipt. Thereafter, the petitioner filed review application for review of the said order dated 02.08.2014 on the ground that in fact it is apparent error on the face of the record that it is wrongly mentioned that the khata khasra number is not there and that the name of the person is also not there. In fact all the above requirements are mentioned in the rent receipt. By the order dated 05.09.2014, said review application was also rejected. The petitioner has filed the said rent

receipt with this writ application increasing the same rent receipt.

7. From perusal of the impugned order, it further appears that on the date of the impugned order, the evidences of the plaintiffs was going on. In the last line of the order, the Court below has fixed the next date for evidence of the plaintiff, i.e., on 5.9.2014. Since the Court below has gone into the merit of the evidence/ relevancy or otherwise of the evidences at the time of receiving the same, in my opinion, the order passed by the Court below is liable to be set aside. The Court below is directed to receive the said rent receipt in evidence and shall consider the relevancy or otherwise or reliability or otherwise of the said rent receipt at the time of final hearing of the suit itself.

8. In the result, this writ application is allowed. The impugned order is set aside. The plaintiff application for marking the rent receipt as an exhibit in the suit is hereby allowed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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