

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8771 of 2015

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Maimun Nisha & Ors

.... Petitioner/s

Versus

Ataur Rahman

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Ataul Haque

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 09-03-2016

Heard the learned counsel, Mr. Md. Ataul Haque for the petitioners and the learned counsel, Mr. Vaidehi Raman Prasad Singh for the respondent.

The Court below by the order dated 01.04.2015 rejected the application filed by the plaintiff-petitioner for marking the certified copy of the registered sale deed dated 08.06.1973 holding that if the original will be filed it will be marked as an exhibit.

The learned counsel for the plaintiffs-petitioners submitted that the plaintiff has filed the suit for declaration of title and recovery of possession on the basis of this sale deed in question and P.W.5, who has been examined, at paragraph 13 has clearly stated that the original sale deed has been lost by his father who has died. According to the learned counsel, the original is not available with the plaintiff then how the same will be filed in the

Court.

The learned counsel, Mr. Singh for the respondent objected and submitted that the defendant has raised the ground that the sale deed is forged document and in fact, it is not executed by the vendor of the father of the plaintiff.

In view of the above submissions of the parties, it appears that the document which has been produced by the plaintiff i.e. the certified copy of the sale deed which is the basis for claim of title is essential for just decision of the controversy between the parties. It is the case of the defendant that it is forged document and they are objecting the marking of the sale deed as exhibit.

Therefore, the Court below shall mark the certified copy of the registered sale deed with objection of the defendant and the objection which is being raised by the defendant may be finally considered by the Court below at the time of judgment of the case when it will be better for the Court to decide the falsity or otherwise and the correctness or otherwise of the sale deed.

Thus, in my opinion, the Court below has not exercised a jurisdiction vested in it by law.

It is settled principles of law that for just decision, if a document is necessary, the same can be received in evidence even

after also arguments are concluded, as has been held by the Supreme Court in the case of **K.K. Velusamy vs. N. Palanisamy, (2011) 11 Supreme Court Cases 275.**

Thus, this writ application is allowed. The impugned order is set aside and the Court below is directed to mark the certified copy of the registered sale deed as exhibit with objection.

(Mungeshwar Sahoo, J)

Saurabh/-

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