

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1064 of 2016**

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Jai Ram Gope @ Jai Ram Prasad & Ors

.... Appellant/s

Versus

Bhagwan Gope & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lala Sachindra Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

4 06-12-2016 **1.** Heard the learned counsel, Mr. Lala Sachindra Kumar,

for the petitioner and the learned counsel, Mr. Shailendra Pandey,

for the respondent.

2. Perused the impugned order dated 10.06.2016 passed by

Sub Judge II, Patna in Title Partition Suit No.140 of 1964 whereby

the learned Court below has rejected the claim of the petitioner for

allotment of additional 1/6th share to the petitioners.

3. It appears that the plaintiff respondent filed partition suit

No.140 of 1964. The suit was decreed preliminarily in the final

decree proceeding after the death of Baiju Gope, the petitioners

filed application for granting 1/6th share from the share of Baiju

Gope. The Court below by the order dated 09.09.2011 directed

the parties to produce their witnesses in support of their claim.

The petitioners are claiming the share from Baiju Gope on the basis



of a gift deed. However, when the Court below directed the petitioners to produce their witnesses in support of their claim, the petitioners instead of producing witnesses and the evidences filed C.W.J.C. No.20120 of 2011. In other words, the intention of the petitioner was not to produce evidence in support of their claim on the basis of registered gift deed. It may be mentioned here that the plaintiff respondent disputing the genuineness of the registered gift deed. And, therefore, without their being any evidence, the matter could not have been decided by the Court below regarding the distribution of share of Baiju Gope on the basis of disputed registered gift deed. However, till 2014 only photocopy of the gift deed was produced. The High Court dismissed the C.W.J.C. No.20120 of 2011 on 20.01.2014 and thereafter also the petitioners did not produce any evidence rather only filed certified copy of the registered gift deed. No witnesses were examined. The Court below by the impugned order has, therefore, rejected the claim of the petitioners.

4. The learned counsel, Mr. Lala Sachindra Kumar for the petitioner submitted that opportunity should be granted to the petitioner to adduce evidence in support of their claim. On the contrary, the learned counsel for the plaintiff respondent submitted that it is the intention of the petitioner to delay the disposal of the



partition suit because the suit is of the year 1964. During the pendency of the suit, the petitioner never produce any registered gift deed in the proceeding. The father of the plaintiff respondent Baiju Gope died in the year 1992 and thereafter only the registered gift deed was produced in the year 2005. According to the learned counsel, Baiju Gope had only two sons and the petitioners are nephew, there is no question of gifting the property to nephew arises in presence of the two sons, therefore, the gift deed is forged. Opportunity was granted to the petitioner to adduce evidence but instead of proving their case by producing witnesses and evidences, they challenged the order before the High Court because their intention is to delay the disposal of the suit. Admittedly, the suit has been decreed primarily in the year 1969. The plaintiff branch was allotted half share in the entire property whereas half share was allotted to the defendant's branch. The petitioners filed application for grant of 1/6th share in addition to half share to the branch. Since the rights of the parties have already been decided by preliminary decree, now the rights of the parties with respect to the registered gift deed is to be decided in the same proceeding following the procedure of trial with regard to the disputed registered gift deed. The Court below, therefore, rightly earlier directed the petitioners to produce their witnesses



and evidences in support of their claim but they challenged the order before the High Court. Therefore, the intention shows that they are trying to delay the matter and in fact from the year 2011 to 2016, the case is pending for deciding the claim on the basis of registered gift deed. However, the petitioners are granted the last chance for proving their case by adducing evidences and witnesses within a reasonable period that may be decided by the Court below but that shall be subject to payment to cost of Rs.50,000/- by the petitioner to the plaintiff respondent within two months. If the cost is not deposited within the aforesaid period, this order passed by this High Court shall automatically stand recalled and the Court below shall proceed to pass the final decree.

5. Accordingly, this Civil Misc. application is disposed of with the aforesaid direction.

(Mungeshwar Sahoo, J)

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