

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4959 of 2013

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Panchu Yadav Son Of Late Ram Charan Yadav Resident Of Village -
Dharhara, P.S. - Raghapur, P.O. - Mahadeo Asthan, District - Supaul
(Bihar).

.... Petitioner/s

Versus

Kali Charan Yadav Son Of Late Behari Yadav Resident Of Village -
Dharhara, P.S. - Raghapur, P.O. - Mahadeo Asthan, District - Supaul
(Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Adv.
Mr. Sushil Kumar Ojha, Adv.
For the Respondent/s : Mr. Gajendra Kumar Jha, Adv.
Mr. Sushil Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 15-02-2016 Heard the learned counsel appearing on behalf of the

petitioner as well as the learned counsel appearing on behalf of the

respondent.

This application has been filed by the defendant-
petitioner being aggrieved by the order dated 28.09.2012 by which
the learned court below has turned down the prayer of the
petitioner for recall of the earlier order dated 08.11.2007.

The learned counsel for the parties have admitted the
facts that the suit has been filed for declaration of title and
recovery of possession and during the pendency of the suit four
petitions were filed on behalf of the plaintiff with prayers for

exhibiting certain sale deeds in evidence and also to implead purchasers as parties. By order dated 16.02.2008 (Annexure-2), the learned court below has disposed of the four petitions and allowed the prayer of the plaintiff for exhibiting the sale deed no. 15 dated 02.01.1979 executed by Jaikant Jha in favour of Ramphal Yadav and others in evidence and rejected such prayer with regard to the other two sale deeds no. 2374 and 2674 at that stage.

Mr. Jha, the learned counsel for the respondent, at this stage, categorically stated in his submission that by order dated 16.02.2008 only one sale deed was admitted in evidence. It has, however, been submitted that the opportunity was granted to the plaintiff to renew their prayer with regard to the two sale deeds which were not allowed to be exhibited by the said order dated 16.02.2008. On 08.11.2012 (Annexure-3), a petition was filed on behalf of the plaintiff for adducing certain documents in evidence by marking the same as exhibits and by order dated 16.09.2010 (Annexure-4) the court has allowed the prayer on behalf of the plaintiff for exhibiting the sale deed no. 15 dated 02.01.1979, the sale deed no. 2374 dated 23.06.1995 and the sale deed no. 2674 dated 18.03.1989 in evidence. It has been stated by the learned court below in the said order that all these three sale deeds have already been directed to be taken in evidence by earlier order



dated 16.02.2008 by imposing cost of Rs. 500/- and the said amount of cost had already been received by the defendant on 23.08.2010. It however appears from the said order dated 16.02.2008 that as far as the prayer of the plaintiff with regard to the later two sale deeds no. 2374 and 2674 was concerned, the court had directed the plaintiff to prove the same after getting the original records at their own cost.

The defendant-petitioner thereafter filed the petition on 15.01.2011 praying for recall of the order dated 06.09.2010 on the ground that in the earlier order dated 16.02.2008 there was no direction with regard to the acceptance of the two sale deeds no. 2374 and 2674 in evidence and therefore the order dated 06.09.2010 which has proceeded on the basis that the prayer of the plaintiff for the three sale deeds have already been allowed was contrary to the facts borne out from the records. By the impugned order, the learned court below has rejected the prayer of the petitioner for recall of the order reiterating its stand that by earlier order dated 16.02.2008 the prayer on behalf of the plaintiff for the sale deed no. 15 dated 02.01.1979 was allowed and with regard to the remaining two sale deeds the direction was issued granting opportunity to the plaintiff for calling the original records from the respective registration offices.



In view of the aforesaid facts which are not in dispute, it is apparent that by order dated 16.02.2008, the prayer of the plaintiff for adducing in evidence the sale deed no. 15 dated 02.01.1979 was only allowed and no order was passed with regard to the remaining two sale deeds no. 2374 and 2674 for accepting them in evidence. In the subsequent order dated 06.09.2010 though the court has observed that by order dated 16.02.2008 these documents were allowed to be adduced in evidence but in fact the court has directed to mark as exhibit only one sale deed no. 15 dated 02.01.1979 and with regard to the remaining two sale deeds no. 2374 and 2674 the liberty/direction was given to the plaintiff to call for the originals with direction to the office to furnish the details of expenses to be incurred in calling for the originals. Therefore, it is apparent that no order in fact with regard to the remaining sale deeds were passed in the order dated 16.02.2008 which was confined only to the one sale deed no. 15 dated 02.01.1979. At this juncture, the learned counsel for the respondent has submitted that the opportunity was granted to the plaintiff to renew his prayer with regard to the remaining two sale deeds dated 06.02.2008. But it does not appear from the order dated 06.02.2008 that the said opportunity was granted and it was observed that the petition of the plaintiff in that regard had been

dismissed for want of clarity. These facts clearly disclose that the learned court below in the order dated 06.09.2010 has inadvertently observed that in the previous order dated 16.02.2008 the direction was for admission the three sale deeds in evidence, though, in the later portion of the order dated 06.09.2010, the matter has been clarified when only one sale deed no. 15 dated 02.01.1979 has been marked in evidence and the opportunity was granted to the plaintiff to call for the original from the office. As the remaining two sale deeds have not been marked in evidence by order dated 06.09.2010, this Court does not find that the learned court below has committed any irregularity in admitting only one sale deed in evidence in pursuance to the earlier order dated 16.02.2008. It is not the case of the petitioner that the later two sale deeds have also been admitted in evidence and marked exhibits. In this view of the matter, this Court does not find merit in this application which is, accordingly, dismissed. However, this order shall not prejudice the right of the petitioner to challenge the admissibility of the later two sale deeds in evidence in accordance with law at appropriate stage.

Devendra/-

(V. Nath, J)

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