

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9445 of 2013

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1. Shree Narayan Singh @ Sri Narayan Singh Son Of Late Babu Raghubar Narayan Singh Managing Trustee Of Rai Bahadur Dalip Narayan Singh Trust Estate Munger Dilip Mahal, Uddayana, Mohalla Purabsari, P.S. Kotwali, P.O. And District- Munger

.... Petitioner/s

Versus

1. Ram Chandra Mandal Son Of Late Banarsi Mandal Resident Of Mohalla Jamalpur, P.O. And P.S. Jamalpur, District Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Uday Singh, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 24-06-2016 Heard learned counsel for the petitioner as well as learned counsel for the respondent.

2. Petitioner is the defendant. While the case was fixed for evidence after closing the case of the plaintiff, he had filed certified copy of certificate of sale, decree as well as certain original documents under list of documents and further prayed that in terms of Section 90 of the Evidence Act, the same be admitted.

3. As the learned lower court of Additional Munsif-3rd, Munger in Title Suit No. 02/2005 considered the rival submissions and rejected vide order dated 21.12.2012 whereupon petitioner/defendant has challenged the same. Admittedly, photo copies of these documents have not been filed along with WS. Learned counsel for the petitioner/defendant has submitted that



subsequent of filing of WS, photo copies have been filed. Again, in terms of Order XIII Rule 1 of the CPC, original documents were not filed. That means to say, plaintiffs were not at all in a position to see the document in its original during course of their evidence. The original documents have been filed when the case of the defendant is to be taken up.

4. Learned counsel for the petitioner/defendant has submitted that rules of CPC are hand made only to facilitate the smooth sailing of the trial. Its aim and ambition is to do substantial justice. It should not be exercised in a manner to throttle the substantial justice. Therefore, even having failed at their end in complying with the requirements, they should not be debarred from filing the document and further getting it an exhibit of the record.

5. To substantiate such plea, learned counsel for the petitioner has referred ***AIR 1980, Pat 160, 2012 (1) PLJR 62, AIR 2001 Delhi 449, AIR 1924 Patna 517*** .

6. The requirement for filing copy of the document along with pleading, be it a plaint or WS has got a purpose. This purpose happens to be that the right of the party in case is based upon documents should be found prima facie supported with and further, by having copy of the document on the record, the party



should be prevented from any kind of manufacturing the forged and fabricated document and further the document should not come as surprise to the adversary, that means to say, the adversary should get a right to properly explain the document whereupon the right of a party has been asserted. Furthermore, to cut short the time in consuming the pendency of the trial by having a document to be filed at different stages of the trial. As such, the law mandated that those documents should be filed in its original form before or at the time of settlement of the issue, so that during course of evidence, the party should get aforesaid document exhibited and in likewise manner, during course of examination or cross-examination the parties should be able to challenge its authenticity.

7. Therefore, directing the parties to file document at the relevant stage has got a purpose and that purpose should not be allowed to be frustrated in ordinary course of nature.

8. Learned counsel for the petitioner has referred the aforesaid judgments wherein also, it has been held that if the document is not in possession of the party or there happens to be reasonable explanation at the end of the party in not having the document at the relevant juncture, then in that event, the party can pray before the court for admitting the document with reasonable

explanation which, if appealed to the Court, be allowed. Otherwise, in normal phenomena, it should be filed at proper stage.

9. Certainly, there happens to be no cogent explanation at the end of the petitioner irrespective of nature of the document whether it happens to be document more than 30 years of age or a public document that the documents were not in his possession at the time of filing of WS or at the time of settlement of issue. When there happens to be no explanation at his end then whether the prayer is to be allowed. If allowed, it will be nothing but a mockery wherein party will be at liberty to drag proceeding and further by such lapses, plaintiff had not been allowed to explain the relevancy of the document for want of those original documents.

10. That being so, the contention of the petitioner/defendant that substantial justice is to be discharged, should also be considered not only in favour of petitioner/defendant rather in favour of respondent/plaintiff. If such prayer is allowed, then in that event, the respondent/plaintiff would have an opportunity to rebut and further, for such lapses, respondent/plaintiff is to be compensated. Thus, as he had already concluded his case, considering the plea of the petitioner as well

as taking into account the nature of the controversy, it looks desirable that petitioner should be given an opportunity. As such the order impugned is set aside. The petition is allowed. Petitioner/defendant is directed to have those documents exhibited subject to condition that respondent/plaintiff will have a right of rebuttal as well as at the cost of Rs. 25,000/- which should be deposited at the end of petitioner/defendant within four weeks.

11. The stay so granted vide order dated 31.10.2013 is vacated.

12. It has been submitted on behalf of respondent/plaintiff that even after having stay being under operation, petitioner/defendant had sold away some lands which the learned lower court will consider in accordance with law, if such kind of prayer is made at the end of respondent/plaintiff.

(Aditya Kumar Trivedi, J)

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