

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10607 of 2012

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Sri Budeshwar Singh @ Bardehwar Prasad Singh & Anr

.... Petitioner/s

Versus

Ramesh Chandra Singh @ Ramesh Chandra & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar @ Sanidh with
Mr. Radhey Shyam Kumar-Advocate
For the Respondent/s : Mr. Manoj Kumar Manoj-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

05 03-02-2016

Heard learned counsel for the petitioners as well as
learned counsel for the respondents.

Petitioners are aggrieved by an order dated
26.03.2010 passed by the Subordinate Judge-IIIrd, Muzaffarpur in
Title Suit No.323 of 2001.

After perusal of the order impugned, it is evident
that aforesaid suit happens to be Partition Suit wherein defendants
were directed to lead evidence first. That indicates that plea of
previous partition should have been taken up by the defendants
contrary to the presumption with regard to Hindu Law. While the
plaintiffs were in a way to adduce evidence, a petition was filed on
their behalf to exhibit sale deed dated 17.05.1976, on its own
invoking Section 90 of the Evidence Act in or an alternative to call
for the same from the purchaser Smt. Saraswati Devi which the
lower Court had rejected.

Though, as per Order-XVI, Rule-1, the obligation lies, but that does not mean that whenever sufficient cause has been shown that too, while availing the opportunity, the Court should shut down the opportunity. It is not the spirit of law. Afterall, litigation has to be finally and conclusively settled at rest and for that the documents, if required, be allowed to be brought up on record.

From the order impugned, it is evident that petitioners/ plaintiffs were availing the opportunity and in that circumstance, the learned lower Court should have accepted and allowed their prayer, which is being allowed subject to cost of Rs.5,00/-. Furthermore, the defendants will be at liberty, if he so chooses, to recall himself in rebuttal of the aforesaid document.

Accordingly, instant petition is allowed in terms thereof.

(Aditya Kumar Trivedi, J)

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