

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.613 of 2016**

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Parma Yadav

.... Petitioner/s

Versus

Shivnath Chaudhary

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akshay Lal Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR

SAHOO

ORAL ORDER

4 18-11-2016

Heard learned counsel, Mr. Mrigendra Kumar,

appearing for the petitioner and learned counsel, Mr. Raghav Prasad, appearing for the respondent.

2. Perused the impugned order dated 24.06.2016 passed by the Sub-Judge-11th, Siwan in T.S. No. 465 of 2010, whereby the learned court below rejected the application filed by the defendant-petitioner seeking permission to produce the memorandum of partition for marking the same as exhibit. It appears that the trial court rejected the application on the ground that from perusal of the written statement, it appears that there is no mention in the written statement regarding the partition dated 17.03.1953.

3. Learned counsel for the petitioner submitted that in paragraph-25 of the written statement, there is clear pleading to the effect that there had already been partition between the parties

on 17.03.1953 and, therefore, according to the petitioner, the fact is to be pleaded and it is not necessary to plead the evidence. In support of the pleading at paragraph 25, document was produced but there was some delay. However, the document, which is produced by the petitioner, is necessary for the determination of the real question of controversy between the parties but the court below rejected the same on erroneous ground, which is available.

4. On the other hand, learned counsel for the respondents submitted that according to provision of Order 13 Rule 1 C.P.C., the document is required to be produced prior to settlement of the issues. In the present case, evidences have already been closed and thereafter the document is sought to be produced by the defendant-petitioner with a view to delay the disposal of the suit. Similar application was also rejected earlier.

5. From perusal of the impugned order, it appears that the court below nowhere held that whether the document is necessary for the decision of the controversy between the parties. The court below no where specified as to when earlier this type of application was filed and when this document was sought to be produced by the petitioner. Further, if at all earlier the petitioner filed application seeking permission to produce the document, then it cannot be said that after closure of the evidence same type of application was filed. In other words, during the continuance of



the evidence of the defendant, the application was filed, which was rejected and, therefore, it was wrongly rejected by the court below. Now, after conclusion of the evidence again this application has been filed. The grievance of the respondent that only to linger the disposal of the suit, the petitioner has filed the application is not tenable because at paragraph 25 of the written statement there is clear pleading that there was partition on 17.03.1953 and this document has been produced in support of the said fact. According to the law, the fact is required to be pleaded and not the evidence. So far delay in filing is concerned, it may be mentioned here that if the document is necessary for the determination of the controversy between the parties, the party cannot be denied justice on the ground of delay only. Here although it is stated that the evidence was closed in the year 2013 but still today, the suit has not been heard.

6. The Hon'ble Supreme Court in the case of ***K.K. Velusamy vs N. Palaanisamy*** reported in ***2011 (11) SCC 275*** has held that although the provision as contained in Order 18 Rule 17(A) C.P.C. has been deleted by amendment of the C.P.C. in the year 2002 but then for interest of justice in the case, the Court has the jurisdiction to permit the parties to adduce further evidence, if requires, for justice in exercise of inherent jurisdiction under Section 151 C.P.C. In my opinion, only because there is delay, the

court below should not have rejected the application filed by the petitioner.

7. In the result, this civil miscellaneous application is allowed. The impugned order is set aside and the memorandum of partition is directed to be received in evidence. The reliability, relevance or genuineness of the document can be examined by the court below at the time of final argument of the suit.

Brajesh/-

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(Mungeshwar Sahoo, J)