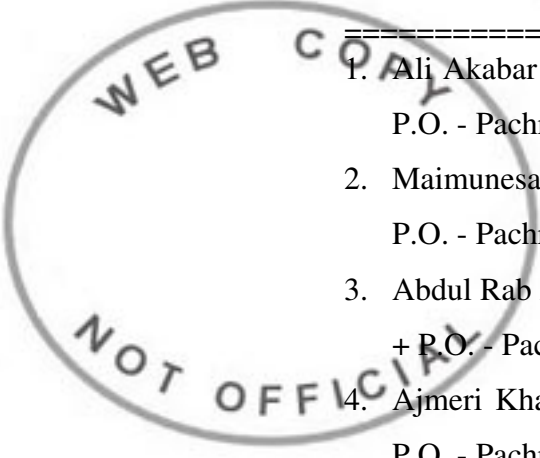


IN THE HIGH COURT OF JUDICATURE AT PATNA

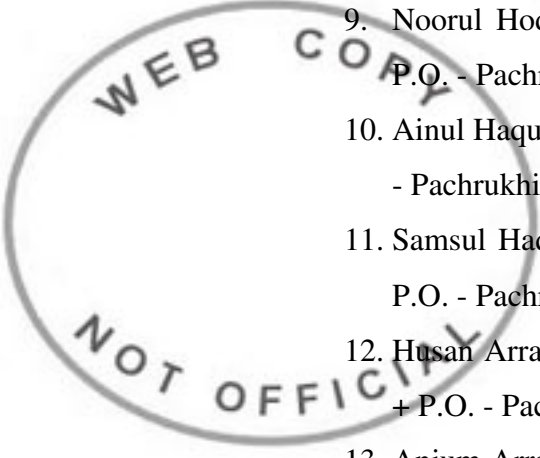
Civil Writ Jurisdiction Case No.13252 of 2014

- 
1. Ali Akabar Son of Late Ijhar Hussain Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, Paragana Bara, District - Siwan.
 2. Maimunesa Wife of Late Ali Haider Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, Paragana Bara, District - Siwan.
 3. Abdul Rab Akhtar Son of Late Ali Haider Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, Paragana Bara, District - Siwan.
 4. Ajmeri Khatoon wife of Ashgar Ali Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, Paragana Bara, District - Siwan.
 5. Jarina Khatoon Wife of Mubarak Hussain Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, Paragana Bara, District - Siwan.
 6. Sanjeri Khatoon Wife of Nesar Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, Paragana Bara, District - Siwan.
 7. Noor Saba Khatoon Wife of Nasruddin Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, Paragana Bara, District - Siwan.
 8. Shahnaz Perveen @ Dulli Khatoon W/o Anwar Hussain Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, Paragana Bara, District - Siwan.

.... Petitioner/s

Versus

1. Jiny Singh @ Rajendra Singh Son of Phuleshwar Singh Resident of Village - Pagurkothi, P.O. + P.S. - Pachrukhi, District - Siwan.
2. Bhagwatia Devi Daughter of Phuleshwar Singh Resident of Village - Pagurkothi, P.O. + P.S. - Pachrukhi, District - Siwan.
3. Babulal Singh Son of Phuleshwar Singh Resident of Village - Pagurkothi, P.O. + P.S. - Pachrukhi, District - Siwan.
4. Habibul Hassan Son of Noor Hasan Miya Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
5. Alimul Hasan Son of Noor Hasan Miya Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
6. Mujibul Hasan Son of Noor Hasan Miya Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
7. Wakil Ahmad Son of not known Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.

- 
8. Samsul Hoda Son of Wakil Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 9. Noorul Hoda Son of Wakil Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 10. Ainul Haque Son of Wakil Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 11. Samsul Haque Son of Wakil Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 12. Husan Arrah Daughter of Wakil Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 13. Anjum Arrah Daughter of Wakil Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 14. Nesun Arrah Daughter of Wakil Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 15. Alam Arrah Daughter of Wakil Ahmad Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 16. Gulsan Khatoon Wife of Noor Hasan Miya Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.
 17. Ketabun Khatoon Daughter of Noor Hasan Miya Resident of Village Shah Takiya, P.S. + P.O. - Pachrukhi, District - Siwan.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Adv.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-11-2016

Heard learned counsel for the petitioners.

Questioning the legal sustainability of the impugned order by which the learned appellate court below has rejected the petition filed by the petitioners for reconsideration and correction of the

judgment dated 28.07.2005 passed in T.A. No. 24 of 1992, the present application under Article 227 of the Constitution of India has been filed.

From the perusal of the materials on record, it transpires that T.S. No. 213 of 1967 was filed by the plaintiff Ijhar Hussain, who was the predecessor of the present petitioners, for declaration of title and confirmation of possession or in the alternative for recovery of possession. By the judgment and decree dated 17.06.1992, the said suit was decreed. The defendants of the said suit filed T.A. No. 24 of 1992 which was allowed in part by judgment and decree dated 28.07.2005 declaring the plaintiff's title and possession over 1/4th share in the disputed property on the basis of gift deed dated 13.09.1934. It would be pertinent to notice here that the plaintiff claimed title over the suit property on the basis of gift deed dated 13.09.1934 which was executed by the widow of Samtali Miyan but the appellate court below specifically came to the finding that the said gift deed was valid only for 1/4th share in the property of Samtali Miyan and the remaining property of Samtali Miyan would go to the other legal heir according to Mohammadan Law. However, on behalf of the plaintiff (since deceased, through L.R.) the petition was filed before the appellate court below for determination as well of the issue as to who were the legal heirs of Samtali Miyan by reconsidering and

correcting the judgment. The appellate court below has turned down the prayer of the petitioners by the impugned order.

After considering the submissions and perusal of the impugned order, it is evident that neither in the suit nor in the appeal there was any prayer by the plaintiff claiming himself to be the heir of Samtali Miyan. The appellate court below therefore, has rightly come to the conclusion that in absence of such a relief in the suit or even in the appeal there cannot be reconsideration and correction of the judgment already passed in the appeal by declaring the plaintiff to be the heir of Samtali Miyan and it has further rightly been observed that the plaintiff may file a separate suit seeking such relief. In this backdrop, this Court does not find any illegality in the impugned order justifying interference under Article 227 of the Constitution of India.

The present application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

U			
---	--	--	--