

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4519 of 2013

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1. Surendra Prasad Son of Late Chhotu Mahto.
 2. Shailendra Kumar.
 3. Rajesh Kumar Alias Rajesh Prasad.
 4. Devendra Kumar all Sons of Surendra Prasad.
 5. Ram Chandra Prasad Son Of Chhotu Mahto.
 6. Pradip Kumar Verma Alias Pradip Kumar.
 7. Sanjay Kumar Verma both Son Of Ram Chandra Prasad all Resident Of Mohalla-Mathuria, Town Biharsharif, P.S Laheri, District Nalanda

.... Petitioner/s

Versus

Sujit Singh Son Of Yogendra Prasad Singh Resident Of Village Chhatiyana, P.S. Harnauth District Nalanda At Present Sanchalak, Maa Vaishno Devi Telecom Centre And Koela Depot (Bhandar), Nalanda Colony, Ram Chandrapur, Town Biharsharif P.S Laheri District Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lala Sachindra Kumar, Adv.

For the Respondent/s : Mr. Binod Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

3 09-02-2016 Heard Mr. Lala Sachindra Kumar, learned counsel appearing on behalf of the petitioners and Mr. Binod Singh, learned counsel appearing on behalf of the plaintiff-respondent.

Calling in question the legal sustainability of the impugned order by which the learned court below has turned down the prayer of the defendant-petitioners for rejection of the plaint under Order 7 Rule 11 C.P.C., the present application under Article 227 of the Constitution of India has been filed.



The plaintiff filed the suit for declaration of title and confirmation of possession. The defendants thereafter filed the petition under Order 7 Rule 11 C.P.C. praying for rejection of the plaint. The grounds as disclosed by the defendants in their petition were that the claim of the plaintiff based upon an unregistered gift deed could not be legally maintainable and no cause of action had been disclosed for the suit and therefore the plaint was fit to be rejected. By the impugned order, the learned court below after considering the submissions and the facts and circumstances of the case has rejected the prayer of the defendants.

Mr. Kumar, the learned counsel for the petitioners has submitted that the learned court below has committed error in law in rejecting the prayer made by the defendant-petitioners for rejection of the plaint ignoring the fact that the claim of the plaintiff was clearly based upon an unregistered gift deed. The learned counsel has referred to Section 123 T.P. Act as well as the relevant provisions of the Registration Act to persuade this Court to take the view that the gift deed with regard to immovable property is required to be effected through registered document and the suit on the basis of such gift deed is not maintainable. The learned counsel has also relied upon the decision of the Apex Court in the case of **T. Arivandandam Vs. T.V. Satyapal, A.I.R.**

1977 S.C. 2421 in support of the contention that the plaint can be rejected if on meticulous examination of the facts the suit is bound to be doomed.

Mr. Singh, the learned counsel for the plaintiff-respondent has supported the impugned order and has contended that the learned court below has also considered the fact that the suit property was purchased by the grand father of the plaintiff for a value of Rs. 95/-

After careful consideration of the matter and submissions on behalf of the parties, it is manifest that the suit of the plaintiff has been filed for the relief for declaration of title as well as for confirmation of possession. The copy of the plaint has been produced before this Court by the learned counsel for the plaintiff-respondent from which it does not appear that the averments made therein disclose any fact disentitling the plaintiff from instituting the suit which may lead to rejection of the plaint. In the decision in the case of **T. Arivandandam** (supra) relied upon by the learned counsel for the petitioners, there is no direction that the plaint in all cases will have to be rejected at the threshold. The learned court below has rightly observed that even if the plaintiffs' claim over the suit property on the basis of an unregistered gift deed will fail, still the issue of possession will

have to be gone into the suit.

In the aforesaid backdrop, this Court does not find any illegality or error of jurisdiction in the impugned order. The writ application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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