

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1258 of 2016**

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Bangali Prasad @ Bangali Malakar & Ors

.... Appellant/s

Versus

Lalita Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailesh Kumar

For the Respondent/s : Mr. Ray Saurabh Nath

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 29-11-2016 Heard the learned counsel for the petitioners and the
learned senior counsel, Mr. Ray Shivaji Nath for the respondents.

Perused the impugned order dated 02.05.2016 passed
by the learned Sub Judge XIth, Gaya in Partition Suit No.271 of
2007 whereby the learned Court below rejected the application
filed by the petitioners to mark the certified copy of order dated
19.04.2012/04.05.2012 passed by Survey Superintendent, Gaya as
exhibit in the partition suit.

The learned counsel for the petitioners relying on the
decision of the Supreme Court in the case of **K.K.Velusamy v.
N.Palanisamy, (2011)11 Supreme Court Cases 275** submitted
that the application cannot be rejected on the ground of delay but
the Court below has rejected the application for marking the
orders as exhibit in the suit only on the ground of delay.

On the other hand, the learned senior counsel, Mr. Ray



Shivaji Nath for the respondents submitted that the evidence of both the sides have already been completed and these documents which are being sought to be produced by the petitioner are all post litem documents. Moreover, the defendants have challenged the parentage of the plaintiffs, therefore, the post litem documents are not at all necessary for deciding the real question in controversy between the parties.

In the counter-affidavit, written statement has been filed by the respondents. From perusal of the written statement, it appears that the defendants have clearly challenged the parentage of the plaintiffs. According to the defendants, the plaintiffs are stranger to the family of the defendants, as such, have got no right to claim partition. This document which is sought to be produced by the petitioner is of the year 2012. The partition suit is of the year 2007. Therefore, these documents are post litem documents. Moreover, the order is passed by the revenue authorities which is not binding on the Civil Court. Further, for deciding the question as to whether the plaintiffs are the family members and whether they are entitled to share in the property, the documents which are sought to be produced are not at all necessary for the determination of the real controversy between the parties. Therefore, only because the petitioners filed the application, the



Court cannot in a routine manner allow the same on the ground that it cannot be rejected on the basis of the decision in the case of K.K.Velusamy(supra). If the documents are necessary for determination of the controversy between the parties, the Court has the jurisdiction but that jurisdiction should be exercised judicially not in a routine manner.

In view of the above facts and circumstances of the case, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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