

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 161 of 2014

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1. Md. Umer Zahid
2. Md. Hamad Zahid
3. Md. Ayan Zahid All sons of Md. Zahid Imam, by Caste Muslims resident of village - Gogi Pothia, P.S. Simraha, District - Araria, Petitioner Nos. 2 & 3 are minor represented through their father Md. Zahid Imam as natural guardian.

.... Plaintiffs/Petitioners

Versus

Md. Fazlur Rahman Son of late Ghulam Rabbani, by caste Muslim resident of village - Dehti, P.S. - Palasi, District - Araria at present resides at Araria Ward No. 19, P.S. - Araria, District - Araria.

.... Defendant/Opposite Party

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Appearance :

For the Petitioners : Mr. Satish Chandra Mishra, Adv.
Md. Nurul Hoda, Adv.

For the Opposite Party : None

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 24-08-2017

1. Heard learned counsel for the petitioners and perused the record.

2. It would appear from perusal of the record that present revision petition has been filed against the order dated 15.07.2014 passed by learned Sub Judge, 1st Araria in Title Suit No 369 of 2013 by which and whereunder he dismissed the aforesaid title suit for want of compliance of previous order dated 01.04.2014.

3. The fact which gives rise to file this revision petition is that the petitioners filed Title Suit No 369 of 2013 against the opposite party for declaration of their right and title in respect of the



suit property in their favour on the ground that suit lands originally belonged to Asima Khatoon and Haji Sk. Zamiruddin. The said Asima Khatoon and Haji Sk. Zamiruddin gifted the suit lands to father of the petitioners and Md. Imamuddin, who happened to be grand father of the petitioners accepted the aforesaid gift on behalf of his minor son through Title Suit No 584 of 1970 which was decreed on 04.09.1970. Subsequently, natural guardian of minor felt need of money for education and treatment of minor as a result whereof being natural guardian he sold the aforesaid lands in favour of defendant/opposite party through registered sale deeds dated 07.08.1971 and accordingly, the opposite party, namely, Md. Fazlur Rahman came in possession of the aforesaid lands. However, the opposite party, namely, Md. Fazlur Rahman orally gifted the suit lands to the petitioners/plaintiffs as petitioners/plaintiffs and defendant/opposite party are near relatives and accordingly, petitioners/plaintiffs came in possession of the aforesaid lands on 15.05.2010. However, when the plaint of Title Suit No 369 of 2013 was presented before the court below, the aforesaid plaint was placed before the learned Sub Judge with Siristadar report and vide order dated 01.04.2014, the learned Sub Judge directed the petitioners/plaintiffs to file documents of the disputed lands and when the petitioners/plaintiffs failed to produce the documents, the learned Sub Judge dismissed the aforesaid Title Suit No 369 of 2013 passing



order dated 15.07.2014 against which this revision petition has been filed.

4. Learned counsel appearing for the petitioners submits that admittedly, petitioners/plaintiffs based their claim in Title Suit No 369 of 2013 on the ground that defendant opposite party had orally gifted the lands in question to them and it is also not in dispute that both parties are governed by Mahomedan Law as both parties are Mahomedans. He further submits that in Mahomedan Law, the oral gift is permissible. In support of his contention, he cited the decision of **Maimuna Bibi and another vs. Rasool Mian and others reported in AIR 1991 Patna 203** in which at para-38 a co-ordinate Bench of this court held that an oral Hibba or gift is permissible under the Mahomedan Law. He also relied upon Article 147 of Mahomedan Law of Mulla. The aforesaid Article 147 says that writing is not essential to the validity of a gift either of movable or of immovable property.

5. Admittedly, in Title Suit No 369 of 2013 petitioners sought declaration of their right, title and possession over the suit property on the ground of oral gift said to be made by defendant/ opposite party in their favour and the petitioners also specifically pleaded in their plaint that aforesaid oral gift was accepted by them and possession of the lands in question was handed over to them and,



therefore, it is admitted position that no document of the aforesaid gift was prepared. Moreover, Order 7 Rule 14 (3) of C.P.C. says that “If a document is required to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint and if plaintiff fails to do so, the plaintiff document shall not be entered in evidence at the time of hearing of the suit without the leave of the court and, therefore, the aforesaid provision goes to show that even if plaintiff of a suit fails to produce necessary documents along with the plaint, the suit shall not be dismissed for the aforesaid failure.

6. On the basis of aforesaid discussions, this revision petition stands allowed and the impugned order dated 15.07.2014 passed by learned Sub Judge, 1st Araria is, hereby, set aside and the matter is sent back to him with direction to pass appropriate order in accordance with law on the point of admission of Title Suit No 369 of 2013.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	31.08.2017
Transmission Date	N.A.

