

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.999 of 2016**

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1. Ram Bharosha Yadav
 2. Bijai Yadav
 3. Ajay Yadav

All Sons of Saryu Yadav

4. Krishna Yadav Son of Birju Yadav
5. Birju Yadav
6. Saryu Yadav

All Sons of Huseni Yadav All are resident of Village: Gopalpur tola-Koiri tola, PS Sherghati, District Gaya.

7. Bandeshwari Choudhary Son of late Muni Choudhary Resident of Village: Dhab Chiraiyan, P.S. Sherghati, District Gaya.

.... Petitioner/s

Versus

1. Kailu Yadav @ Kedar Yadav
2. Kailash Yadav
3. Pappu yadav All Sons of Kali Yadav Resident of Village: Dhab Chiraiyan, P.S. Sherghati, District Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Awadhesh Kumar Singh Tarun

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**

ORAL ORDER

5 06-12-2017 Heard both sides.

The petitioners have filed the civil miscellaneous petition against the order dated 08.07.2016 passed by Sub Judge I, Sharghati(Gaya) in Title Suit No.06 of 2015/179 of 2003 by which the petition of the petitioner for marking the power of attorney as exhibit has been rejected.

The plaintiff-petitioners filed the suit for declaration of title and confirmation of possession. The case of the plaintiff is



that the ex-landlord, Nand Lal Gupta settled the land in favour of Smt. Surajkanti Devi, w/o Sri Laxmi Narain Gupta. But after vesting of assets, Surajkanti Devi settled the land in favour of Nand Lal Gupta and Nand Lal Gupta sold the land in favour of plaintiffs but the plaintiffs could not bring the power of attorney on record. Power of attorney is the basis of the suit and if the same is not allowed to be brought on record, the plaintiff would suffer irreparable loss but the learned Sub Judge has rejected the petition of the petitioner merely that the petitioner filed the petition at a very belated stage i.e. at the stage of argument.

The learned counsel for the respondents submits that plaintiffs did not bring the relevant document at the initial stage and when the argument is to be concluded by the defendants, the plaintiffs filed the photocopy of the power of attorney and not its original. The photocopy cannot be exhibited in evidence.

On consideration of the facts, I find that of course, the plaintiffs have filed the photocopy of the power of attorney during the argument but the plaintiffs are in possession of the certified copy of the power of attorney. The power of attorney is the basis of the suit and in absence of which the plaintiffs would suffer irreparable loss. The learned Sub Judge should have allowed the petition of the petitioners-plaintiffs to bring on record the certified



copy of the power of attorney as the same is the basis of the suit.

Accordingly, the learned Sub Judge has committed jurisdictional error and thus, the order dated 08.07.2016 is set aside. The plaintiffs are allowed to bring on record the certified copy of power of attorney as exhibit and thereafter the learned Sub Judge shall proceed in accordance with law.

Accordingly, the civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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