

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24558 of 2013

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1. Brahamdeo Rai S/O Late Chunni Bhagat Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
 2. Sayanarain Rai @ Satyanarain Singh S/O Bharahdeo Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
 3. Ashok Rai S/O Bharahdeo Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
 4. Bachu Rai S/O Bharahdeo Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
 5. Rajoo Rai S/O Bharahdeo Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
 6. Babul Kumar @ Baban Kumar Son Of Satyanarain Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
 7. Guddu Kumar Son Of Satyanarain Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
 8. Karan Kumar Son Of Ashok Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
 9. Ganga @ Pintu Kumar Son Of Ashok Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna

.... Petitioners

Versus

1. 1. Sahdeo Rai S/O Late Chunni Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
2. Dukhan Rai S/O Sahdeo Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
3. Paras Rai S/O Sahdeo Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
4. Dina Nath Rai S/O Sahdeo Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
5. Dhiraj Kumar Son Of Dukhan Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
6. Gautam Kumar Son Of Dukhan Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna
7. Sarwan Kumar S/O Parash Rai Resident Of Village - Dariapur, Khairatali, P.S. Phulwarisharif, District - Patna

.... Respondents

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Appearance :

For the Petitioners : Mr. Ranjan Kumar Dubey, Advocate
For the Respondents : Mr. Jogendra Mishra, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

2 04-12-2017

This application under Article 227 of the Constitution of



India has been filed to quash the order dated 12.09.2013 passed by Adhoc Additional District Judge-4th, Patna in Title Appeal No.104 of 2000 whereby and whereunder the learned appellant court below has rejected the petition dated 13.02.2001 filed on behalf of the defendant appellants under Order 41 Rule 27 of the Code of Civil Procedure.

2. Heard learned counsel for the petitioners and the respondents.

3. The learned counsel for the petitioners submitted that the court below has rejected the petition without appreciating the legal position. The case was pending for argument and according to order 41 Rule 27, the appellant Court was required to consider those documents at the time of pronouncement of judgment. The trial court while decreeing the suit in favour of respondent has discussed the aforesaid document at para-21 of its judgment. The said document is not on record and so in order to appreciate the facts, it is necessary to be placed on record by marking exhibit.

4. The learned counsel for the respondents on the other hand submitted that petitioners/defendants was aware of the said document from before and so the same cannot be admitted in evidence at the appellant stage. The appellant in his written statement at para-20 has specifically stated about the said sale



deed and so the same cannot be admitted in evidence at the appellant stage.

5. On perusal of impugned order, I find that the learned appellant court while rejecting the petition has observed that the defendant in his written statement at para-20 has stated about the registered deed of sale. The written statement filed on behalf of the petitioners has been annexed as Annexure-A of the counter affidavit. Para-20 of written statement runs as follows:-----
“Subsequently said Sukhdeo Rai sold plot no.260 area 18 decimal to one Mukhlal by virtue of registered sale deed dated 19.01.1968 ----”. The petitioners filed written statement in the month of March, 1994 and after contest, it was decreed in the year 2000. The appellant filed petition under order 41 Rule 27 CPC on 13.12.2001. According to the provision of Order 41 Rule 27 (aa)- only those documents can be admitted in evidence which were not within his knowledge of the party or could not, after the exercise of due diligence, be produced at the time when the decree appealed against was passed. From para-20 of the written statement, it appears that that the appellants were aware about the said document and in specific word the defendants have stated about the said document.

6. Thus, I find that the court below has not committed



any wrong in rejecting the petition filed under Order 41 Rule 27 of the CPC. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

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