

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1033 of 2016**

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1. Smt. Mira Devi Wife of Bir Bahadur Singh, resident of Village- Dighi Kala, P.S.-Hajipur Sadar, P.O.- Dighi Kala, District- Vaishali.

.... .... Appellant/s

Versus

1. Premchandra Prasad Singh Son of late Mahendra Singh, resident of Village- Dighi Kala, P.S.-Hajipur Sadar, P.O.- Dighi Kala, District- Vaishali.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. M. N. Parbat, Sr. advocate

For the Respondent/s : Mr. Ratan Kumar Sinha, advocate

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

**ORAL ORDER**

5      11-12-2017

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 04.09.2016 passed by learned Sub-Judge-IX, Vaishali in Title Suit No. 89 of 1997 by which the learned Sub-Judge rejected the petition of plaintiff for admitting documents in evidence.

The learned senior counsel for the petitioner submits that petitioner filed a petition for bringing a Bharna deed executed by Premchandra Singh @ Lala Singh in favour of one Rameshwar Paswan and to admit the same in evidence in order to show that Premchandra Singh @ Lala Singh was separate from his brother, Shambhu Prasad Singh. Premchandra Singh in his written



statement disputed the genuineness of the deed of agreement to sale, for which the plaintiff filed suit for specific performance of contract, stating that the suit land is joint family property and he has got no exclusive right to execute the deed of agreement to sale. It is submitted that petitioner had no knowledge about the deed of mortgage executed by Premchandra Singh @ Lala Singh in favour of Rameshwar Paswan in which Premchandra Singh disclosed one of his brother as boundary raiyat and this fact shows that Premchandra Singh was separate from his brother. The learned senior counsel for the petitioner further submits that according to sub-rule 3 of Rule 14 of Order 7 the plaintiff is entitled to bring on record relevant facts after taking leave of the court. Premchandra Singh/ defendant executed deed of mortgage in the year 1993, therefore, it is a relevant piece of evidence for just decision of the case.

On the other hand, the learned counsel for the respondent submits that in a suit for specific performance of contract the genuineness of the agreement for sale is to be decided. Even a member of a joint family can execute the deed of agreement to sale of the joint family property and this is not at all relevant for deciding the case of specific performance of contract. The order does not suffer from any jurisdictional error and



material irregularity.

After hearing the submissions of the parties, the question falls for consideration whether the learned Sub-Judge has committed any jurisdictional error or material irregularity?

Admittedly the petitioner-plaintiff filed suit for specific performance of contract on the basis of an agreement to sale a piece of land by respondent-defendant. The respondent-defendant in his written statement, besides other grounds to resist the suit for specific performance, resisted the suit on the ground that the suit land is joint family property and the defendant had no exclusive authority to execute the deed of agreement to sale. On this ground if the plaintiff wants to bring on record a document (Bharna deed) executed by the defendant much prior to execution of deed of agreement to sale by the defendant, showing that the defendant was separate from his brother and that is why the defendant has mutated the name of his own brother in the boundary of the Bharna deed/ mortgage deed. The document on the face appears to be relevant document in order to contradict the statement of the defendant in his written statement, although in a suit for specific performance of contract only genuineness of the deed is to be looked into. Thus, I find that the learned Sub-Judge has committed jurisdictional error in rejecting the petition of the



plaintiff to bring the document on record as evidence.  
Accordingly, the order dated 04.09.2016 is set aside and the  
petitioner/ plaintiff is permitted to bring on record the aforesaid  
document, in accordance with law.

This Civil Misc. petition is, accordingly, allowed.

**(Prabhat Kumar Jha, J)**

BKS/-

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