

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1037 of 2016

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1. Poonam Devi W/O Binod Yadav, resident of village- Parari, P.S.- Bithan,
District- Samastipur Petitioner

Versus

1. Bisundeo Yadav S/O Late Bachchi Yadav,
2. Suresh Prasad Yadav S/O Sajjan Yadav,
3. Uday Yadav S/O Naini Lal Yadav, All residents of village- Parari, P.S.-
Bithan, Distric- Samastipur Respondents

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Appearance :

For the Petitioner : Mr. Suneil Kumar Thakur, Adv.
For the Respondents : Mr. Rang Nath Chaubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 06-12-2017 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order, dated 22.06.2016, passed in Title Suit No. 27 of 2005.

The petitioner is plaintiff. The petitioner filed petition to examine Ranjeet Prasad and exhibit the memorandum of partition, but, by the impugned order the learned Munsif, Rosera, Samastipur, rejected the petition of the plaintiff-petitioner on the ground that unregistered memorandum of partition can not be looked into as evidence.

The learned counsel for the petitioner submits that the evidentiary value of the documents can be taken at the time of hearing of the suit and not at this stage, if the defendants raised any objection about the admissibility of any documentary evidence, the same shall be considered at the time of hearing, but, the document should be marked as exhibits with objection. It is submitted that the memorandum of partition is not required to be registered as the same shows only arrangement of partition



between co-parcener and the same can be exhibited and marked as exhibits.

The learned counsel for the respondents submitted that the document, itself, is not admissible.

Having considered the submissions of both sides and on perusal of the order, I find that the petitioner simply filed petition to examine Ranjeet Prasad in order to bring on record the unregistered memorandum of partition, but, the learned Munsif has illegally rejected the petition holding that the memorandum of partition is not admissible. The admissibility of a document can be decided at the time of argument of the suit, but, not at that stage and, therefore, I find that the learned Munsif has committed jurisdictional error by not allowing the plaintiff to examine Ranjeet Prasad and to bring the memorandum of partition deed on record. Thus, the order, dated 22.06.2016 is set aside. The civil miscellaneous petition is allowed with a direction to Munsif to allow the plaintiff to examine Ranjeet Prasad and bring the memorandum of partition on record as exhibits, with objection, if any objection is raised by the defendants in accordance with law.

(Prabhat Kumar Jha, J)

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