

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1423 of 2016**

Ramji Prasad, s/o Late Shital Mahto, resident of village - Ganpat Bigha, P.O. and P.S. Hilsa, District - Nalanda

... .. Appellant

Versus

1. Bibha Devi, d/o Late Suresh Prasad,
2. Kamla Devi, d/o Late Shital Mahto,
3. Rameshwar Prasad, s/o Late Shital Mahto,
4. Shyam Sundari Devi, w/o Ramji Prasad,
5. Arbind Prasad, s/o Sri Rameshwar Prasad,
6. Kulpati Prasad, s/o Arbind Prasad,
7. Pappu Prasad, son of Ramji Prasad
8. Praveen Prasad, son of Ramji Prasad
9. Navin Prasad, son of Ramji Prasad,

All are resident of village - Ganpat Bigha, P.O. and P.S. Hilsa, District - Nalanda

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ranjan Kumar Dubey
For the Respondents	:	Mr. R. K. P. Sinha
		Mr. Pankaj Kumar
		Mr. Niranjana Kumar

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

**JUDGMENT AND ORDER
ORAL**

Date : 08-11-2017

The petitioner is aggrieved by an order, dated 16.09.2016, passed by learned Sub Judge II, Hilsa, in Title Suit No. 08 of 1994, whereby he has rejected the petitioner's petition, dated 24.05.2016, through which he had made a prayer to mark photocopy of the original deed of partition, dated 25.06.1982, as an exhibit.

2. From the facts available on record as discussed herein below, the Court forms an opinion that it is because of the conduct of this petitioner that the disposal of the suit got delayed for several



years, because of filing of repeated petitions despite repeated rejections and, accordingly, I am of the view that this application, filed under Article 227 of the Constitution of India, does not deserve to be simply dismissed, but with exemplary cost.

3. I may take note of the facts, in brief, leading to passing of the impugned order, in Title Suit No. 08 of 1994, pending in the Court of Sub Judge II, Hilsa.

4. The petitioner is defendant no. 3 in the said suit for partition. His son, namely, Raghubir Kumar @ Munna Prasad, who is said to have been wrongly described as Navin Prasad, according to his own deposition of Raghubir Kumar, is defendant no. 9. Respondent no. 1 is the plaintiff and is daughter of Suresh Prasad, the deceased brother of the present petitioner.

5. The petitioner had earlier filed an application on 21.09.2011 before the Court below for asking the plaintiff to produce the documents, which were earlier submitted and subsequently withdrawn in the light of an order, dated 13.12.2000 passed by the Court below. The said application came to be rejected by an order, dated 24.10.2011 by the Court below. It was the case of the petitioner before the Court below that the plaintiff herself had filed list of documents and the documents mentioned in the said list included the deed of partition, dated 25.06.1982. This



is to be noted that whereas the plaintiff was seeking partition in the joint family and claiming her share through said Title (Partition) Suit No. 08 of 1994, the case of the defendant no. 1 was that the partition had already taken place in the year 1982 itself and deed of partition, dated 25.06.1982, was already prepared. The original deed of partition, dated 25.06.1982, was submitted by the plaintiff herself, according to the petitioner (defendant no. 3), along with the list of documents before the Court below, which she subsequently opted to withdraw with an assurance that the same would be producing before the Court as and when required. With this case, the petitioner had filed the application seeking direction to the plaintiff to produce the original deed of partition, dated 25.06.1982. The plaintiff is said to have denied any partition at all, let alone the existence of the said document in her custody.

6. After rejection of the petitioner's application, dated 21.09.2011, by an order, dated 24.10.2011, the petitioner filed a review application before the Court below on 02.12.2011. Finding no ground for review, the Court below had rejected the review application by an order, dated 23.01.2012.

7. From the order, dated 23.01.2012, which has been brought on record, it appears that before the Court below, the petitioner also took a plea that a revision application was also filed



against the same order, dated 24.10.2011, before this Court, which was pending. The Court below has noticed the fact that on the ground of pendency of the said revision application, the petitioner has been seeking adjournments before the Court below. Way back on 23.01.2012 itself, the Court below had observed that the petitioner was trying to delay disposal of the suit, one way or the other.

8. This is to be noted that the Civil Revision No. 75 of 2012, which was preferred by the petitioner before this Court, was allowed to be dismissed for non-compliance of the peremptory order, dated 28.09.2012.

9. Subsequently, the petitioner filed an application, on 01.12.2015, before the Court below with a prayer to mark exhibit the photocopy of the deed of partition, dated 25.06.1982, which application was not pressed and was, accordingly, dismissed, as is evident from the order, dated 03.12.2015, passed by the Court below, which has been brought on record by way of Annexure-C to the counter affidavit filed on behalf of the respondents. The petitioner thereafter filed another application on 24.05.2016, again making a request to mark exhibit the photocopy of the original deed of partition, dated 25.06.1982. The Court below again rejected the said application, by order, dated 10.06.2016, noticing



earlier orders passed by the Court. The Court below, while rejecting the said application, dated 24.05.2016, made following observations:-

“It appears on 20 August 2015 defendant no. 3 had filed a petition requesting filing of the said deed of exchange as well as deed of partition but later on learned counsel for defendant no. 3 admitted that his petition is not maintainable in view of earlier order passed by this court. And accordingly, petition filed by the defendant number 3 was dismissed as not maintainable.

It appears, learned counsel for defendant no. 3 in petition dated 24 of May 2016 has twisted same matter with a view to procure his undue mileage. Earlier, such petition has repeatedly been dismissed by this Court as well as probably by Hon'ble Patna High Court too. Learned counsel for plaintiff has not admitted the photocopy of deed of partition as well as deed of exchange dated 25th of June 1982 and 22 February 1985 respectively as admitted documents. In facts and circumstances, this Court is of the view that the documents filed by defendant number 3 cannot be presumed as admitted document. Other was also, defendant has filed this petition at the extreme fag end of argument therefore this court is not inclined in any way



to allow the prayer made by defendant number 3 in his petition dated 24th of May 2016, it is apparent that this petition has been filed with vested interests with a view to keep this record pending and to harass the plaintiff.”

10. The petitioner thereafter filed an application, under Article 227 of the Constitution of India before this Court against the order, dated 10.06.2016, whereby the petitioner’s application, dated 24.05.2016, was rejected, giving rise to Civil Miscellaneous Jurisdiction No. 619 of 2016. This Court refused to exercise supervisory jurisdiction under Article 227 of the Constitution of India after having noticed the fact that the Court below had passed reasoned and detailed order. Since a plea was taken that there were several errors on record in the order, dated 10.06.2016, the Court, while disposing of the Civil Miscellaneous Jurisdiction No. 619 of 2016, granted liberty to the petitioner to file review application, which came to be dismissed by the order, dated 16.09.2016. While rejecting the application for review, the Court below recorded that the petitioner had dishonestly suppressed material facts and he had not come with clean hands.

11. From the impugned order, I notice that the Court below was not made known about the dismissal of civil revision



application for default before this Court, as has been noticed above.

12. The said order, dated 16.09.2016, passed by the Court below, in Title Suit No. 08 of 1984, is under challenge in the present application.

13. Learned Counsel appearing on behalf of the petitioner has submitted that despite there being so many errors apparent on record, the Court below has refused to review its own order on erroneous considerations. He has submitted that the Court below has recorded, in the impugned order, that the defendant no. 3 admitted, in course of cross-examination, that he was having original copy of the said deed of partition, dated 25.06.1982, which fact is apparently incorrect. He has drawn my attention to the cross-examination of the said defendant no. 3 to contend that there is no such deposition in the evidence of defendant no. 3. He has also submitted that the Court below has committed error on record while holding that the order sheet does not disclose that the plaintiff had filed the said deed of partition, dated 25.06.1982, he submits, relying upon a copy of the list of documents, which was submitted before the Court below by the plaintiff that the said list contains the deed of partition, dated 25.06.1982, which goes to



show that the said document, in original, is in custody of the plaintiff.

14. Learned Counsel representing the plaintiff-respondent no. 1 has referred to the averments made in the counter affidavit and has drawn my attention to the evidence of defendant no. 9, who is, admittedly, the son of the petitioner. In his deposition, the defendant no. 9 has disclosed his age to be of 28 years, as on 17.11.2008. If that is to be accepted, he would have been 2 years of age on the date of alleged preparation of deed of partition, dated 25.06.1982. Learned Counsel for the plaintiff-respondent no. 1 has referred to the statement of the said defendant no. 9, who is son of the petitioner, to say that he admitted that the original deed of partition, dated 25.06.1982, is in his possession. Following is the statement of the son of the petitioner, who is defendant no. 9 in the partition suit.

“1982 के बटबारा का कागज दाखिल
नहीं किया हुआ लेकिन मेरे पास है”

15. As is evident from the facts noted above, the only dispute is with respect to claim of the petitioner that the original deed of partition, dated 25.06.1982, is in possession of the plaintiff, which, according to him, is evident from the list of documents, submitted on her behalf before the Court below; whereas, it is the



case of the plaintiff-respondent no. 1 that there would have been no question of submitting original deed of partition, dated 25.06.1982, before the Court below since she herself was seeking partition. The son of the petitioner, in his deposition, himself has stated that the original deed of partition, dated 25.06.1982, is in his possession. Learned Court below appears to be right in its approach while holding that the petitioner is attempting to delay disposal of the suit on spurious ground.

16. The facts, which have been noted above, speak for themselves. This application, in my view, does not have any merit and its filing is an abuse of the process of the Court. This application is, accordingly, dismissed with cost.

17. Considering the conduct of the petitioner, as has been noticed by this Court, by filing repeated unnecessary applications, and the conduct, which has been noted by the Court below, I quantify the cost to be Rs. 40,000/-. Accordingly, this application is dismissed with a cost of Rs. 40,000/- to be paid by the petitioner to respondent no. 1.

18. All interim orders stands vacated.

19. Since the matter is pending for last 23 years and it is stated at the bar that the suit is at the stage of final arguments, I direct the Court below to dispose of the suit within a period of two



months from the date of communication of the present judgment and order. No unnecessary adjournment, sought either by the parties, shall be granted by the Court below.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10-11-2017
Transmission Date	10-11-2017

