

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.27 of 2017**

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Sanjay Kumar Singh @ Rambhu Singh

.... Petitioner/s

Versus

Sri Nageshwar Prasad Singh @ Sujan Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Verma

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

2 19-01-2017

Heard the learned counsel for the plaintiff-petitioner.

Perused the impugned order dated 24.10.2016 passed by Sub Judge III, Patna City in Title Suit No.178 of 2013 whereby the learned Court below rejected the application filed by the plaintiff-petitioner under Order 18 Rule 3 C.P.C.

It appears that the plaintiff-petitioner filed the suit for declaration that the property contained in gift deed dated 05.02.1942, standing in the name of Babu Uchit Singh and Babu Baiju Singh, are the joint family property of Babu Rambriksh Singh and all the three sons of Babu Rambriksh Singh are the heirs of the donees having 1/3rd share therein in the subject property and then prayed for partition of 1/3rd share.

It may be mentioned here that it is not a simple suit for partition. The plaintiff is praying for declaration with respect to the gift deed which is of the year 1942 which is registered gift



deed. Therefore, entirely the onus is on the plaintiff to prove his case as has been held by the Supreme Court, (2014) 2 Supreme Court Cases 269(Union of India (UOI) and Ors. vs. Vasavi Co-op. Housing Society Ltd. and Ors). The Hon'ble Supreme Court in the case held that in a suit for declaration, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, or the case set up by the defendants would not be a ground to grant relief to the plaintiff. In such circumstances, there is no question of application of Order 18 Rule 3 arises because the entire burden is on the plaintiff.

Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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