

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15630 of 2013

=====

1. Md. Ali Son Of Late Shokat Ali Resident Of Village - Suryapur, P.S. - Chhatapur, District - Supaul

.... Petitioner/s

Versus

1. Ahmad Ali Son Of Late Shokat Ali Resident Of Village - Suryapur, P.S. - Chhatapur, District - Supaul
2. Md. Lutfullah Ansari Son Of Late Abdul Alim Resident Of Village - Suryapur, P.S. - Chhatapur, District - Supaul
3. Kusheshwar Biraji Son Of Late Sabilal Biraji Resident Of Village - Tekuna, P.S. - Pratapganj, District - Supaul

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. PRAMOD MISHRA, Adv
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-01-2017

Heard learned counsel for the petitioners.

By the impugned order, the learned court below has allowed the prayer of the defendants to reopen their evidence and fix the matter for evidence of the defendants.

The matrix of the fact discloses that the suit was filed for declaration that Baby Akhtari had inherited 1/3 rd share in the properties left by his father Abdul Hafiz and was competent to gift the said property to the petitioner and accordingly, the gift deed executed by her was legal and valid and the plaintiff had acquired right, title and possession of the suit land on that basis. The further relief in the suit was for declaration that the sale deed no. 1426 of



1996 and 891 of 1998 were illegal, null and void and cannot confer title and possession to the defendant nos. 2 and 3. The relief was also made for recovery of possession if the plaintiff was found dispossessed. It further transpires from the averments made in the present application that the evidence of the plaintiff was closed on completion on 16.11.2010 and thereafter as the defendants did not adduce their evidence, by order dated 24.02.2011, the evidence of the defendants was closed. However, the defendants subsequently filed the petition on 16.03.2013 praying for grant of liberty to lead evidence.

By the impugned order the learned court below has allowed the prayer of the defendants after imposing cost. Learned counsel for the petitioner has submitted that the order passed by the learned court below cannot be sustained as the court was not competent to review its own order and in fact the earlier order had attained finality and not challenged by the defendants before higher forum. Learned counsel has also submitted that the impugned order has been obtained in a fraudulent and frivolous manner only for delaying the disposal of the suit.

After considering the submissions and materials on record, this Court finds that the suit has been filed seeking substantial relief over immovable property. Though the defendants did not



lead evidence for considerable period but this Court does not find that the court below has committed error in allowing the prayer of the defendants for adducing evidence after imposing cost.

Accordingly, this Court is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is dismissed.

However, it further transpires that the suit is of the year 1998 and has apparently remained pending for the reason prima facie attributable to the defendants. In such circumstances, this Court directs the learned court below to expeditiously complete the proceeding of the suit without granting unnecessary adjournments and dispose it off preferably within a period of six months in accordance with law.

(V. Nath, J)

Ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

