

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22094 of 2013

=====

Sarveshwar Pandey son of Late Rameshwar Pandey, resident of village – Panpura,
PS and PO-Tarari, Anchal-Tarari, Pargana-Piro District-Bhojpur.

.... Petitioner/s

Versus

1. Rama Kant Pandey
2. Kamla Kant Pandey
3. Ashok Kumar Pandey
4. Arun Kumar Pandey
5. Akhileshwar Pandey
All sons of Late Awadhesh Pandey
6. Deo Dashi Devi, wife of late Awadhesh Pandey,
All resident of village – Panpura, PS and PO-Tarari, Anchal-Tarari, Pargana-
Piro District-Bhojpur
7. Dudhnath Pandey
8. Dadan Pandey
9. Pramod Kumar Pandey alias Lal Babu
10. Kaushal Kr. Pandey
11. Lalanji Kant Pandey @ Dhan Babu
Respondent nos. 7 to 11 are sons of Late Rameshwar Pandey and are residents
of village – Panpura, PS and PO-Tarari, Anchal-Tarari, Pargana-Piro District-
Bhojpur.
12. Grijja Devi, daughter of Rameshwar Pandey, wife of Awadhesh Pandey,
resident of village – Senser Dehari, PS-Karakat, District-Rohtas
13. Usha Devi D/o late Awadhesh Pandey wife of Sri Gobardhan Tiwary, resident
of village – Mitari, PS-Nokha, District-Rohtas
14. Baleshwar Dayal Pandey son of Late Awadhesh Pandey, resident of village –
Panpura, PS and PO-Tarari, Anchal-Tarari, Pargana-Piro District-Bhojpur
15. Sachchida Nana Pandey, son of Nathuni Pandey, resident of village – Panpura,
PS and PO-Tarari, Anchal-Tarari, Pargana-Piro District-Bhojpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : M/s Anish Chandra Sinha and
Ranjan Kumar Dubey, Advs.

For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-11-2017

The plaintiff of Title Suit No. 103 of 2000 which is pending
in the court of Sub-Judge-VI, Bhojpur (Ara), is petitioner before this
Court. He has filed this application for setting aside the order dated



12.08.2013 whereby and whereunder the Court below accepted the documents filed behalf of the defendants for admitting in evidence, subject to payment of cost of Rs.500/-.

2. The contention of the learned counsel for the petitioner is that the defendants have filed the documents against the provisions of law as provided under Order 13 Rule 1 and 2 of the Code of Civil Procedure. It has been submitted that after framing of issues, the plaintiff has examined as many as ten witnesses. After three years of examination of plaintiffs witnesses, the respondents-defendants filed eighteen documents as per list of documents. The Court below without assigning any good reason, has accepted the same and so the same is fit to be set aside.

3. The learned counsel for the respondents submits that the documents, which have been filed, are known to the plaintiff and are very important for adjudication of controversy/dispute between the parties. The plaintiff has filed the suit for declaration that the deed of gift dated 11.01.1999 executed by one Jagdish Pandey in favour of Deo Dashi Devi (respondent no. 6) is forged and fabricated document and not binding on the plaintiff. The suit was originally filed against the father of defendant and after his death, the present respondent defendant has been added as party to the suit. The respondent-defendant got the knowledge about the document only when he



discovered it in his house. He has filed the same in the Court without causing any delay. This document is registered document and the suit has been filed to set aside the aforesaid deed of gift. The main issues between the parties is adjudication of issue relating to deed of gift as to whether the same is genuine document duly executed by the doner in favour of the respondent nos. 6 and 8.

4. In Sarbanand Paswan vs. Mahendra Prasad Singh case, 1999(1) P.L.J.R. 118, a Division Bench of this Court has held that it is settled law that, if the documents are found to be relevant to decide the real issue in the controversy and when the Court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 C.P.C. the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received, and opportunity be given to prove them and rebuttal if any and their relevance and effect they may have, be considered in deciding the issues arising in controversy. Under these circumstances, the trial court was not justified in refusing to condone the delay and to receive the documents.

5. It is the case of the petitioner that the documents were not in possession of the petitioners and after the death of



father he found those documents in a box and filed the same without causing any delay. Therefore, there is no question of delay in filing in Court. Even if there was some delay in filing the said documents, the Court should have taken lenient view in condoning it as has been held by the Apex Court in the case of Billa Jagan Mohan Reddy vs. Billa Sanjeeva Reddy and others (1994) 4 S.C.C. 659.

6. In view of above discussions I find that the Court below has not committed any jurisdictional error in accepting the said documents for the purpose of evidence. The plaintiffs have challenged the genuineness of said deed of gift and for adjudication of issue under controversy, these documents are relevant and the same have been rightly accepted by the Court below. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.12.2017
Transmission Date	

