

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21339 of 2013

In
C.R. 1331 of 2008

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Shyam Bahadur Manjhi & Ors

.... Petitioners

Versus

Ram Janam Manjhi & Ors

.... Respondents

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Appearance :

For the Petitioners : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Manoj Kumar, Advocate

For the Respondents : Mr. Shekhar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 20-11-2017 This writ application has been filed to set aside the order dated 21.07.2008 passed by 1st Additional District Judge, Gopalganj in Title Appeal No.09 of 1997 whereby and whereunder the court below has refused to admit the documents in evidence.

2. Heard learned counsel for the petitioners and perused the record.

3. The respondents 1st party had filed Partition Suit No.75 of 1988 for partition and carving out their 1/2 share in the suit property and also for declaration that the deed of gift executed by Most. Fuleshra in favour of defendant nos.1 to 3 (petitioners) is void, inoperative, illegal and forged document. The said suit was decreed and the defendants, who are petitioners before this court, filed Title Appeal No.09 of 1997. The said appeal was transferred



to the Court of 1st Additional District Judge where petitioners filed a petition under Order 41 Rule 27 of C.P.C. along with documents for admitting the same as additional evidence. The documents sought to be admitted are Parcha granted in favour of petitioner under B.P.H.T. Act, certified copy of order dated 10.09.1981 passed by C.O. in Case No.28/81-82 and certified copy of order passed by D.C.L.R. in Appeal No.01/89-90. All the documents appear to be public documents. The respondents filed a rejoinder and after hearing both sides, the court below rejected the petition.

4. The case of the defendants-petitioners is that there had been a previous partition among the parties in three equal shares. After the death of Nageshwar, his widow Most. Fuleshra came in possession over the entire land left by her husband. She in the capacity of absolute owner had executed a deed of gift on 25.09.1972 in favour of defendant nos.1 to 3 (petitioners) and so the petitioners are entitled to 2/3rd share in the suit property.

5. From perusal of impugned order, it appears that the learned lower appellate court while rejecting the petition has observed that no satisfactory reason has been assigned for filing these documents in appellate court and secondly that these documents are not required for adjudication of issues involved in the appeal/suit. The court below has rejected the petition without



hearing the argument. Whether these documents are relevant or not for adjudicating the issues involved in the appeal can only be determined and decided at the time of argument. Admittedly, the argument before court below has not commenced. Before passing order in the matter of admitting evidence under Order 41 Rule 27 of C.P.C., the Court must be satisfied that the evidence is required to enable the Court to pronounce judgment in a more satisfactory manner or for any other substantial cause. Thus, the court below has committed an error in rejecting the petition without hearing the argument of parties.

6. In view of the above discussions, the impugned order is set aside. The court below is directed to consider and decide as to whether judgment could be pronounced in absence of the additional evidence produced by the petitioner under Order 41 Rule 27 of C.P.C.

7. Accordingly, this writ application is disposed of.

(Sanjay Kumar, J)

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