

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1842 of 2017

1. Ashok Kumar Khatri,
2. Pradip Kumar Khatri,
3. Ghanshyam Prasad Khatri,
4. Devi Lal Khatri @ Pappu Kumar Khatri, All sons of Late Ram Bhajan Lal Sonar and all resident of Mohalla- Bagh Kalu Khan, P.S.- Khajekalan Patna City, District- Patna.

... .. Appellant/s

Versus

1. Hasan Majeed, Son of Late S.M. Majeed, Resident of Mohalla- Bagh Kalu Khan, Majeed Compound, P.S.- Khajkala Patna City, District- Patna.
2. Ahsan Majeed, Son of Late S.M. Majeed, of Mohalla- Bagh Kalu Khan, P.S.- Khajekala, Patna City, Patna.
3. Azharul Hoda,
4. Akabarul Hoda,
5. Muzaffarul Hoda,
6. Reyaz Fatima,
7. Jamal Fatima, all sons and daughters if Bibi Allay Fatima alias Safia Khatoon, and all resident of Mohalla- Bagh Kalu Khan, P.S.- Khajekala, Patna City, District- Patna.
8. S. Abbas Mustafa,
9. S. Khalid Mustafa,
10. S. Tarikha Mustafa, All sons of Late S.M. Mustafa,
11. Mrs. Tahseen Rana, Daughter of Late S.M. Mustafa and wif of Imranul Haque, And resident of Haroon Nagar, Sector II Phulwari Sharif, P.S.- Phulwarisharif, Dist- Patna.
12. Bibi Mahfooza Khatoon, Daughter of Late S.M. Majeed,
13. Nazish Binzain, Son of Late Bibi Massooda Khatoon, All resident of Mohalla- Bagh Kalu Khan, P.S.- Khajakala, Patna City, District- Patna.
14. Samrin Zain, Daughter of Late Bibi Masooda Khatoon, All resident of Mohalla- Bagh Kalu Khan, P.S.- Khajkala Patna City, District- Patna.
15. Bibi Massooma Khatoon, Wife of S. Ali Ahmad, Resident of Mohalla- Bagh Kalu Khan, P.S.- Khajekala, Patna City, District- Patna.
16. Smt. Kamla Devi, Daughter of Late Ram Bhajan Lal Sonar, Wife of Late Kailash Kumar Khatri, Resident of Jamshedpur, P.S.- Mango, District- Jamshedpur.
17. Smt. Renu Devi, Daughter of Late Ram Bhajan Lal Sonar, Wife of Dinesh Pd. Khatri, R/o Jamshedpur, P.S.- Mango, District- Jamshedpur.
18. Smt. Anita Devi, Daughter of Late Ram Bhajan Lal Sonar, Wife of Rakesh Kumar Tandon, R/o Village- Jandaha, P.S.- Jandaha, District- Vaishali.
19. Dilip Kumar Khatri,
20. Bhola Pd. Khatri,
21. Durga Pd. Khatri, All sons of Late Ram Bhajan Lal Sonar, All resident of Mohalla- Bagh Kalu Khan, P.S.- Khajakala, Patna City, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Naresh Kumar Sinha



For the Respondent/s : Mr. J. S. Arora, Sr advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 10-04-2018 Heard both sides.

The petitioners have filed this petition against the order dated 29.08.2017 passed in Title Appeal No. 73 of 2016 by learned Additional District Judge-VI, Patna City by which the petition dated 20.04.2017 filed by plaintiff under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure has been allowed.

The plaintiff filed Title Suit No. 143 of 1970 before the Munsif, Patna City for declaration of title, recovery of possession from the defendants 1st set and for permanent injunction against the defendants and for mesne profit with respect to suit property bearing plot No. 913, holding No. 91 (New 103), circle No. 139, ward No. 23 and sheet No. 221 situated in Mohalla Bagh Kalu Khan, Patna City.

The defendants 1st set appeared and filed written statement claiming that father of deceased defendant No.1 took settlement of entire plot No. 913 and constructed his house over a portion and they were in continuous possession over the suit land for 12 years and thus they perfected their title by way of adverse possession. The suit was dismissed as in the last



moment the issue of non-joinder of parties was also framed. The appellant preferred appeal and file sale deeds with a prayer to bring on record the aforesaid said sale deed executed by real land owner in favour of plaintiff in the year 1944. The petition was allowed by order dated 29.08.2017 and against that order the petitioners filed this Civil Misc. petition.

The learned counsel for the petitioners submits that condition of Order 41 Rule 27 of the C.P.C. has not been fulfilled. From the perusal of petition filed under Order 41 Rule 27 of C.P.C. (annexure-6), it would appear that the plaintiff/appellant filed original sale deeds executed by heirs of Bibi Qamrun Nisha on 03.05.2016 during the pendency of the suit but the plaintiff did not take any step for bringing the sale deeds in evidence. It is further submitted that the ex landlord did not file any return showing transfer of land in the name of plaintiff at the time of vesting of the estate in order to admit those sale deeds. The court has not followed the procedure as envisaged under Order 41 Rule 28 of C.P.C.

On the other hand, the learned counsel for the respondents submits that the documents are very essential for just decision of the case. The order of learned appellate court is well discussed wherein it has been held that the sale deeds are



very much essential and relevant for just decision of the case and for pronouncement of judgement.

Having considered the facts aforesaid and on perusal of the order, I find that the appellant filed petition for bringing those two sale deeds on record by way of additional evidence. The appellant has very categorically stated that even after due diligence he could not trace out the aforesaid sale deeds and during the first week of May, 2016, while he was searching out different records, he found out the aforesaid sale deeds and filed the same in court on 03.05.2016 but the suit was posted for hearing on the point of non joinder of parties and on that ground the suit was dismissed. Therefore, the plaintiff could not get opportunity to bring those two documents in evidence and immediately thereafter he filed the petition. The sale deeds appears to be very essential and relevant for just decision of the case.

I do not find any jurisdictional error or illegality in the impugned order. This Civil Misc. petition is, accordingly, dismissed.

BKS/-

(Prabhat Kumar Jha, J)

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