

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.868 of 2018**

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1. Bindeshwar Singh, Son of Late Raj Narayan Singh.  
2. Ravindra Narayan Singh, Son of Late Raj Narayan Singh, Both resident of Village Khokasi, P.S.- Parihar, District- Sitamarhi. .... Appellant/s  
Versus

1. Hiralal Singh, Son of Late Surya Narayan Singh, resident of Village- Khokasi, P.S. & Anchal- Parihar, P.O. Barahi, District- Sitamarhi.  
2. Sandhya Devi @ Sanjha Devi, Wife of Late Raj Narayan Singh.  
3. Devendra Singh, Son of Late Raj Narayan Singh.  
4. Ram Prakash Singh,  
5. Manishankar Singh.  
6. Raghvendra Singh. Respondents No. 4 to 6 are Sons of Late Ramchandra Singh.  
7. Bimla Devi, D/o Late Ramchandra Singh.  
8. Renu Devi, D/o Late Ramchandra Singh. Respondents No. 2 to 8 resident of Village- Pakarsama, P.S.- Benipatti, District- Madhubani.  
9. Most. Khako Devi, D/o Late Surya Narayan Singh, Wife of Late Sri Narayan Singh, resident of Village- Madeopatti, P.S.- Jaleshwar, District- Mohottari (Nepal),  
10. Shyam Kishore Singh.  
11. Kewal Kishore Singh, Respondents No. 10 & 11 are Sons of Late Raj Narayan Singh, resident of Village- Khokasi, P.O.- Barahi, P.S. & Anchal- Parihar, District- Sitamarhi.  
12. Most. Kaushalya Devi, D/o Late Raj Narayan Singh, Wife of Late Ram Vilakshan Singh, resident of Village + P.O.- Narha Gachhi Tola, P.S.- Bajpatti, District- Sitamarhi.  
13. Smt. Veena Devi, D/o Late Raj Narayan Singh, Wife of Dilip Kumar Singh, resident of Village- Sahasram, P.O.- Barahi, P.S.- Parihar, District- Sitamarhi. .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Surendra Kishore Thakur  
Mr. Manoj Kumar Pandey  
For the Respondent/s : Mr. Alok Kumar Jha

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL ORDER**

2      26-07-2018

Heard both sides.

The petitioners have filed this Civil Misc. petition against the order dated 31.01.2018 passed by learned Munsif Sadar, Sitamarhi in Misc. Case No. 20 of 2015 by which the learned Munsif allowed the petition of opposite party no. 1 to bring four documents, enumerated in the petition as public documents, as exhibits.



Admittedly, the petitioners filed Misc. Case No. 20 of 2015 under order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte judgment and decree passed in Partition Suit No. 32 of 1995 on the ground of non service of notice on them and lack of knowledge about the pendency of Partition Suit No. 32 of 1995. The opposite party, during the pendency of the Misc. Case, earlier filed two petitions one on 27.04.2017 and another on 08.06.2017 making prayer to get the public documents, such as, the sale deeds dated 14.02.2002 executed by Gain Kumari Devi in favour of Raj Narayan Singh, the written statement filed in Title Suit No. 201 of 2004 (Hira Lal Singh Vs. Raj Narayan Singh), the affidavit of Devendra Singh dated 14.07.2005 passed in Title Suit No. 201 of 2004, the power executed by Raj Narayan Singh on 08.06.2005 filed in Title Suit No. 201 of 2014 and attendance of the defendant, Raj Narayan Singh, in Title Suit No. 201 of 2014 dated 03.04.2006 and 05.10.2005. The learned Munsif vide order dated 14.07.2017 dismissed the petition of the opposite party no. 1 of the Misc. Case holding that those documents have got no relevancy for disposal of the petition under Order IX Rule 13 of the C.P.C. The opposite party no. 1 being aggrieved by the said order filed Civil Misc. Case No. 1514 of 2017 in this Court and this Court vide order dated 08.11.2017 dismissed the petition of the opposite party no. 1, respondent no. 1, in this case.



The learned counsel for the petitioners submits that opposite party no. 1 again filed, in sum and substance, same petition making the same prayer for exhibiting those documents as evidence on 08.01.2018 but the learned Munsif by the impugned order dated 31.01.2018 allowed the petition filed by the opposite party no. 1/respondent no. 1 holding that these documents are relevant for disposal of Misc. Case. It is further submitted that once this question has already been set at rest by the learned Munsif as well as by this Court earlier vide order dated 14.07.2017 and the order dated 08.11.2017 passed in Civil Misc. petition case no. 1514/2017, learned Munsif has got no jurisdiction to again allow the petition of opposite party no. 1 as the subsequent petition would be bad on principles of res judicata and thereby the learned Munsif has committed jurisdictional error and illegality in allowing the petition.

Mr. Alok Kumar Jha, learned counsel for the respondent no. 1, submits that in fact those documents are very much relevant for disposal of Misc. Case filed for setting aside the ex parte judgment and decree passed in Partition Suit No. 32 of 1995 to the extent that the opposite party no. 1 wanted to show that petitioners had knowledge about the pendency of Partition Suit No. 32 of 1995 but this fact was not considered either by the learned Munsif at the earlier stage or by this Court while passing the order in Civil Misc. Case No. 1514 of 2017.



Having considered the submissions of both sides and on perusal of records, I find that the submission of learned counsel for the respondent no. 1 is not at all acceptable because the petition of opposite party no. 1 for exhibiting some documents in the Misc. Case No. 20 of 2015 was dismissed on 14.07.2017. Against which opposite party no. 1/respondent no. 1 herein, filed Civil Misc. Case No. 1514 of 2017 and the same was also dismissed. Therefore, the question for bringing those documents in evidence has already been decided by this Court. Thereafter, the learned Munsif should not have allowed the same petition of opposite party no. 1 to get those documents exhibited as evidence as the subsequent petition for the same relief is barred by res judicata.

Taking into consideration the facts, I find that the learned Munsif has committed jurisdictional error and illegality and order dated 31.01.2018 passed in Misc. Case No. 20 of 2015 is not sustainable. Accordingly, the same is set aside and this Civil Misc. petition is allowed.

**(Prabhat Kumar Jha, J)**

BKS/Rajan

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