

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11549 of 2014

=====

Smt. Shyama Devi W/o- Sri Raj Kumar Jha Resident of Nawada, P.O.- Nawada,
P.S.- Bahera, Div- Benipur, District- Darbhanga, Bihar

.... Petitioner/s

Versus

1. Sri Raj Kumar Jha
2. Ashok Kumar Jha
3. Birendra Kumar Jha All are sons of Late Babu Kameshwar Jha All one resident
of Village- Nawada, P.O.- Nawada, P.S.- Bahera, Div- Benipur, Dist- Darbhanga,
Bihar

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Karn, Advocate

For the Respondent/s : Mr. Girish Chandra Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 04-04-2018

The plaintiff of Title Suit No.22 of 2002 pending in the Court of Sub Judge-II, Benipur, has filed this application for setting aside the order dated 29.05.2014 whereby and whereunder the court below allowed the petition filed on behalf of the defendants and admitted and marked the documents as exhibits.

2. Heard learned counsel for the petitioner and the respondents.

3. It appears that after filing of written statement, the court below framed issued on 26.11.2009. The trial commenced and after closure of evidence of defendants the case was fixed for argument. The defendants filed petition and case was re-open on 30.11.2010 for



evidence. Their evidence was closed on 26.05.2011. The case of the defendants was again re-opened for the third time on 13.09.2011 and after recording the evidence of one of the witness, their case was closed on 29.02.2012. Then they filed a petition on 17.10.2011 praying therein to mark two documents which are registered sale deeds. The court below rejected the said petition on 16.02.2012. Thereafter the defendants again filed petition on 27.07.2012 and 01.11.2012 to admit those documents which was again rejected on 23.01.2013. Then the defendants again filed petition 21.05.2013 for taking the aforesaid two documents in evidence which was again rejected on 27.05.2013. Then they filed petition on 16.06.2013 to review the earlier order which was rejected on 07.03.2014. Thereafter the defendants again filed petition for the 5th time on 28.05.2014 which after hearing was allowed by the learned court below on 29.05.2014.

4. The learned counsel in the above background referred a ruling reported in AIR 1966 SC page 1061 wherein the Hon'ble Apex Court has held that the decision of the Court having jurisdiction even if wrong is binding between the parties till it is set aside by the higher authority as per provision of law. The court below has/had no jurisdiction to review or pass order, allowing the same matter which has been rejected earlier by itself. The defendant admittedly did not



filed any revision/petition before the higher authority and made attempt on several occasion to get the documents exhibited. The petition of defendant for admitting the documents was allowed on his 5th attempt at the time of argument. I find that the certified copy of these documents were obtained by the defendants on 04.01.2017 and they were in possession of documents since before the settlement of issues. They did not file the same during the evidence although they were in possession. The court below has thus committed error in admitting those documents as per impugned order forgetting its earlier orders whereunder the petition of the defendants was rejected on four occasions.

5. In view of above fact, the impugned order admitting the documents is not sustainable and is accordingly set aside. This application is allowed.

(Sanjay Kumar, J)

B.Kr./-

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

