

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17302 of 2013

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1. Vijay Lakshmi Devi wife of Shri Dineshwar Prasad
 2. Dineshwar Prasad son of late Janak Prasad,
Both residents of mohalla-Langartoli Chowk, Baripath, PS-Kadamkuan, PO-Bankipur, Patna-800 004, Town and District-Patna at present residing C/o Sri Om Prakash, Mohalla-Bakerganj, Moharrampur, Natrajgali, PO-Bankipur, PS-Pirbahore, Patna- 800 004, Town and District-Patna.

.... Petitioner/s

Versus

1. Binod Chandra Gupta son of Late Bhagwan Gupta, resident of mohalla-Langertoli, PS-Kadamkuan, PO-Bankipur, Patna-800 004, Town and District-Patna.
2. Deo Kumar Gupta, son of late Deo Lal Gupta, resident of Dariapur, Koeri Tola, PO-Kadamkuan, PS-Kadamkuan, Patna-800 003, Town and District-Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shyam Kishore Sinha, Adv.

For the Respondent/s : M/s Jitendra Singh and Rahul Kumar, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 23-02-2018

This application has been filed by the defendants of Title Suit no. 23 of 2004 for setting aside the order dated 10th June 2013 passed by the learned Additional District Judge-VII, Patna whereby and whereunder the documents filed on behalf of the respondents-plaintiffs were admitted in evidence as public documents.

2. Heard learned counsels for both the parties.

3. The respondent no. 1 filed Probate Case No. 13 of 2004 on 18.01.2004 before the District Judge, Patna which was converted into Title Suit No. 23 of 2004. The respondent no. 1 filed a



petition on 24.04.2013 praying therein to admit following five documents on account of being public documents. These six documents are as follows:-

- (i) Certified copy of Trust deed
- (ii) Certified copy of deed of cancellation of the Trust.
- (iii) Certified copy of power of attorney
- (iv) Certified copy of plaint of T.S.No. 467 of 2001
- (v) Certified copy of order dated 14.02.2005 passed in Title Suit no. 467 of 2001 and
- (vi) certified copy of cremation certificate of Balo Devi.

4. The learned counsel for the petitioners submits that out of aforesaid six documents, four documents as mentioned at serial no. I to IV are not the public documents and so the same cannot be admitted in evidence as public documents. In this connection, the learned counsel for the petitioners cited rulings reported in AIR 1975 Calcutta 381 (Rabindra N. Das v. Santosh Kumar Mitra and others) and AIR 1964 Patna 45 (Gulab Chand and others vs. Sheo Karan Lall Seth and others).

5. The learned counsel for the respondents on the other hand submits that all the aforesaid documents are registered documents and were prepared by public servant in course of their official duty. These documents do not prejudice the petitioners in any



way and so the same have rightly been accepted in evidence by the court below.

6. The learned counsel for the petitioners fairly concedes that the certified copy of order passed in Title Suit No. 467 of 2001 and certified copy of cremation certificate of Balo Devi are the public documents, but so far other documents are concerned, these are admittedly not the public documents.

7. The provision of sub-section (2) of section 74 of the Evidence Act explains the public documents and section 76 permits certified copies of different documents to be admissible in evidence. The Trust deed and the deed of cancellation of the Trust deed cannot be termed as public document in view of said provision and so it is not admissible under section 76 of the Evidence Act. Section 65 (c) of the Evidence Act provides that the secondary evidence might be given of the existence, condition or contents of a document in a case where the original has been destroyed or lost or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.

8. The copy of plaint filed in a case is also not a public document as held by this Court in Gulab Chand and others (supra) wherein it has been held that a plaint or a written statement filed in a case are not public documents within the description of documents



given in section 74 (2) of the Evidence Act. The plaint is neither an Act nor the record of the act of any public officer and so the certified copy of plaint cannot be taken into consideration as public document. The court below has erred in accepting those documents as public documents.

9. The impugned order so far admitting these four documents as mentioned above at serial no. I to IV of para 3 is not sustainable and is accordingly set aside.

10. This application is accordingly disposed of.

(Sanjay Kumar, J)

Mahesh/-

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CAV DATE	
Uploading Date	
Transmission Date	

