

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19805 of 2011

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1. Ram Singar Sah S/o Late Gopal Sah
 2. Mahesh Sah S/o Late Gopal Sah
 3. Madan Sah S/o Late Gopal Sah
 4. Ramanand Sah S/o Late Gopal Sah
 5. Ram Babu Sah S/o Late Gopal Sah

All are residents of village & P.S.- Mushahari, District- Muzaffarpur

.... Petitioner/s

Versus

1. Muneshwar Sah S/o Late Pragash Sah, R/o Village & P.S.- Mushahari, District- Muzaffarpur
2. Tuntun Sah S/o Late Pragash Sah, R/o Village & P.S.- Mushahari, District- Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Krishna Kant Singh and Anil Kr. Sinha, Advs.
For the Respondent/s : Smt. Archana Sinha @ Archana Shahi and
Mrs. S. Bihari, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 29-03-2018

The petitioners are defendants of Partition Suit No. 71 of 2002. They have filed this application for modifying the order dated 28th September 2010 and to quash the order dated 01.06.2011 passed by Sub-Judge-V, Muzaffarpur whereby and whereunder the learned court below refused to modify the order dated 28th September 2010 wherein the petition dated 15th September 2010 for accepting the documents filed on their behalf, was rejected.

2. Heard learned counsel for the petitioners as well as the respondents.



3. Learned counsel for the petitioners filed a supplementary affidavit along with some documents annexed therewith.

4. It appears that the respondents filed the aforesaid suit for partition of land mentioned in Schedule-I of the plaint. The defendants appeared and contested the case. The defendants have denied the genealogical table and asserted that the plaintiffs are stranger to their family. The father of plaintiffs had no concern with the family of petitioners-defendants.

5. After closing of the evidence, the defendants filed a petition along with two documents with a prayer to accept the same in evidence. The plaintiffs raised objection. The court below refused to accept the documents in evidence.

6. On perusal of pleadings of both the parties, I find that the plaintiffs claim to be grandson of Kishun Sah, who was uncle of the defendants. The said partition suit was filed in the year 2002. The defendants appeared and filed their written statement. After closing the evidence of plaintiffs, the defendants examined their witnesses and their evidence was closed on 18th January 2007. In course of argument, the defendants filed two documents which are Rent Receipt and Land Possession Certificate both standing in the name of plaintiffs. The court below, while rejecting the said documents and



petition, observed that there was no pleading with respect to Basgit Parcha in the written statement. Learned counsel for the petitioners referred para 12 of the written statement wherein they have stated that the plaintiffs were living at their native village and their residential house situates over the land with respect to which Basgit Parcha was granted. The petitioners filed a petition for modifying the said order on the ground that the defendants had referred about Basgit Parcha in the written statement. The learned court below, after hearing both sides on modification petition, refused to modify the order on the ground that the petition was rejected considering the fact that the documents were filed at the fag end of trial, when the argument was being heard.

7. On perusal of these two documents, I find that the copy of Land Possession Certificate and Rent Receipt relate to period 2010-11. Copy of Land Possession Certificate stands in the name of plaintiffs. The evidence of both the parties has already closed. The case of defendants was closed on 18th January 2007, but after three years of closing their evidence, these two documents which were admittedly brought into existence during the pendency of the suit, have been filed. The petitioners have not assigned any reason as to how they procured these two documents in the name of plaintiffs. The columns mentioned in the Land Possession Certificate are vacant and



do not bear signature of the person in whose favour Certificate was issued.

8. The learned counsel for the respondents submits that the petitioners had no authority to obtain these two documents rather the same have been manipulated fraudulently in order to harass the plaintiffs. The petitioners have not explained as to how they procured these two documents which are not the public documents and if these documents are allowed to be accepted in evidence, the plaintiffs would be seriously prejudiced, as the genuineness of these two documents have been challenged.

9. The court below considering the nature of documents as well as delay in filing the same at the fag end of trial, has rightly rejected the same.

10. In view of above facts, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03/04/2018
Transmission Date	

