

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20822 of 2014

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Subhash Sharan son of late Shankar Sharan Resident of A.N. Sinha Road,
Adjacent to Anugrah Bhawan Kadam Kuan Police Station Kadam Kuan, District
Patna.

.... Petitioner/s

Versus

1. Kundan Sharan son of Late Tripurari Sharan, Resident of Mohall Koeribari,
Police Station Civil Lines District Gaya.
2. Raj Kishore Singh son of Late Bindeshwari Singh Resident of Mohalla Vir
Kuer Singh Colony Near Magadh Medical College, Police Station Magadh
Medical College District Gaya.
3. Ram Chandra Prasad @ Ramesh Lal son of Late Nand Lal Resident of
Mohalla Chowk Police station Kotwali District Gaya.
4. Arun Kumar Mahtha son of Late Mahtha Keshri Nandan, Resident of Mohalla
New Area Bisar Talab, Police station Civil Lines District Gaya.
5. Maya Sharan wife of Late Shankar Sharan, resident of Mohalla Kadam Kuan
Police station Kadam Kuan District Patna.
6. Sanjay Sharan son of Late Shankar Sharan resident of Mohalla Kadam Kuan
Police station Kadam Kuan District Patna.
7. Sidharth Sharan son of Late Shankar Sharan resident of Mohalla Kadam Kuan
Police station Kadam Kuan District Patna.
8. Smt. Shanta Sharan, Daughter of Late Shankar Sharan, resident of Mohalla
Kadam Kuan Police station Kadam Kuan District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Advocate Mr. Pramod Singh, Advocate
For the Respondent/s	:	Mr. Siddhartha Prasad, Advocate Mr. Shyameshwar Kumar Singh, Advocate Mr. C.Swaroop, Advocate Mr. Om Prakash Kumar, Advocate Mr. Kaushlubh, Advocate Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-09-2018

Petitioner before this Court is defendant no.1 in Title Suit

No.38 of 2014/57 of 2011 pending in the Court of Munsif-Ist, Gaya.

He has filed this application for quashing the order dated 30.05.2014



whereby and whereunder the prayer of the petitioner to respect the plaint under order 7 Rule 11 sub-rule (a) and (d) of CPC was rejected.

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

3. It appears that the aforesaid suit was filed by respondent no.1 on the file of Munsif for a decree of perpetual injunction restraining the principal defendant (father of the petitioner) from interfering in peaceful possession of the plaintiff over the land mentioned in schedule-B of the plaint. The plaintiff has asserted his possession since 29.08.1992 on the basis of oral transfer. The defendants on the other hand denied the possession of the plaintiff. It has been submitted that the case of oral transfer is false and concocted. The claim of the plaintiff is hit by Section 118 of Transfer of Property Act and Section 17 of Registration Act. The plaintiff has absolutely no title deed to assert his title or possession over the suit land and so the plaint is fit to be rejected.

4. On going through the submission of both the parties and documents on record, I find that both parties are asserting title over the suit land. The trial of suit has already commenced. The learned court below while rejecting the prayer of the petitioner has observed that without giving opportunity of trial to the parties, the plaint cannot be rejected. The plaintiff has asserted adverse possession and even if



he is a trespasser, he has every right to protect his possession. The possession of parties can be ascertained only after trial and in this view of the matter, the learned trial Court has rightly refused to reject the plaint at the initial stage.

5. In view of above discussions, I do not find any merit in this application and the same is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

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

