

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17122 of 2012

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1. Md. Shamshad Alam
 2. Md. Naushad Alam
 3. Md. Arsad @ Arsad Alam
 4. Md. Dilsad Alam @ Dilsad Alam
All sons of Late Ramjan Ali,
 5. Julekha Khatoon wife of Late Ramjan Ali
All residents of village Gaddi Raghapur, P.S. Raghapur, District-Supaul.

.... Petitioners

Versus

Md. Kamruddin son of Late Nazeeb Mian, resident of village-Gaddi Raghapur, P.S.-Raghapur, District-Supaul.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Durgesh Nandan, Advocate
Mr. Kamlesh Pd. Yadav, Advocate
For the Respondent/s : Mr. Shailendra Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

8 25-01-2018 This writ application has been filed to set aside the order dated 28.05.2007 passed by learned Additional Munsif, Birpur in Title Suit No.13 of 1995 whereunder the prayer of defendant to re-open the case for adducing evidence was rejected and cost of Rs.1,000/- was imposed.

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

3. The father of the respondent filed the aforesaid title suit before the court below for declaration of deed of relinquishment as inoperative and also to partition the suit property to the extent of half and half between the parties. After



death of original respondent, his son was substituted. The petitioners filed written statement and all the relevant documents are on record.

4. It has been submitted on behalf of the petitioners that the said documents could not be exhibited on their behalf and so they have been seriously prejudiced. The petitioners had filed their documents on 21.11.1996. The evidence of respondent (plaintiff) was closed on 25.08.2004. Thereafter the petitioners examined their witness on 23.09.1997 and their evidence was closed on 11.10.2006. The documents admittedly were filed before settlement of issue. The documents were on record at the time of examination of plaintiff's witness. Both parties were aware with those documents and if the same are taken into consideration, the respondent would not be prejudiced in any way. The contention of learned counsel for the respondent on the other hand is that the petitioners in spite of sufficient opportunity did not get their documents exhibited and they only to prolong the disposal of the suit have filed the present petition. The same cannot be accepted in evidence at the close of evidence of defendant.

5. From perusal of materials on record I find that the defendants had filed these documents at early stage of hearing of the suit. The documents are being claimed to be basis of the title



of defendants and necessary to be brought on record for proper adjudication of issues involved in the suit.

6. In view of above facts and for the ends of justice the impugned order dated 28.05.2007 is set aside subject to payment of cost of Rs.3,000/-(Rupees three thousand) to the respondent (plaintiff) before the court below. The court below is directed to give an opportunity to the petitioners to adduce evidence within a period to be fixed by the court below.

7. This writ application is, accordingly, allowed.

(Sanjay Kumar, J)

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