

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7703 of 2015

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Shatrughan Kumar Pathak @ Shatrughan Pathak, son of Late Daya Ram Pathak, r/o village - Patkhkhauri, Post-Nandpur, P.S. Manjhi, District- Saran.

... .. Petitioner/s

Versus

1. Dashrath Pathak,
2. Jagarnath Pathak both s/o Late Mahavir Pathak,
3. Smt. Kanti Devi wife of Sudharshan Pathak all r/o Village - Patkhkhauri, Post- Nandpur, P.S. Manjhi, Distirct-Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Singh, Advocate
For the Respondent/s	:	Mr. Madhav Prasad Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 07-12-2018

This application has been filed for quashing the order dated 29.01.2015 passed by Munsif-IV, Saran at Chapra in Title Suit No.05 of 2001 whereby and whereunder the prayer of the petitioner to mark the deed of cancellation as exhibit was refused.

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

3. The respondents/plaintiff have filed the aforesaid suit for a decree of part performance of contract against the defendant no.1. The defendant no.1 had executed two sale deeds dated 11.12.2000 and 15.12.2000 in favour of plaintiff with respect to 20 dhurs land for a total consideration of Rs.22,000/-. The defendant no.1 subsequently cancelled both the sale deeds as per deed of cancellation dated 26.12.2000 and sold the entire land to



defendant nos.2 and 3 on 03.01.2001. In course of trial, the petitioner filed a petition to mark the sale deeds and deed of cancellation. The court allowed the prayer of defendants and marked two registered sale deeds as exhibit but refused to accept deed of cancellation. The learned counsel for the petitioner submitted that the deed of cancellation is admitted document and its admissibility has to be considered at the time of appreciating the facts at the time of disposal of the suit. The objection of the respondents is that the deed of cancellation is legally not admissible. The second objection is that the case is at the stage of argument and so no document can be admitted in evidence at this stage.

4. In this regard, the learned counsel for the petitioner cited a rulling reported in (2011) 11 SCC 275 in which the Hon'ble Apex Court has held that the court has jurisdiction to reopen the case even after the case has been heard and concluded and it has been posted for judgment, if according to the court is necessary to reopen the case and re-examine the witness or mark any document as exhibit. The defendant at para-17 of their written statement has stated that the sale deed executed by defendant no.1 was cancelled on 03.01.2001. The defendant had filed the said deed of cancellation in court on 17.06.2008 but inadvertently the same



could not marked. The plaintiff is aware of the said document and so it will not prejudice him in any manner.

5. In view of above discussions and for the ends of justice, the impugned order refusing to admit the deed of cancellation is set aside and this writ application is allowed. The court below is directed to give an opportunity to the petitioner to get the said deed of cancellation exhibited in accordance with law.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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