

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22525 of 2013

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Gangotri Devi Wife of Raj Narayan Singh, resident of village- Sasana P.S. Kudara District- Kaimur (Bhabhua).

.... Petitioner/s

Versus

1. Bhukhan Singh Son of Late Megh Nath Singh
2. Gupteshwar Singh Son of Bhukhan Singh, resident of village Sasana P.O. Dangari P.S. Kudara District Kaimur (Bhabhua)
3. Munna Singh Son of Bhukhan Singh, resident of village Sasana P.O. Dangari P.S. Kudara District Kaimur (Bhabhua)
4. Radhika Devi Wife of Shiv Pujan Singh, resident of village Bhabhua P.O. Bhabhua P.S. Bhabhua District Kaimur
5. Sharada Devi Wife of Thakur Dayal Singh, resident of village Tiwara Ghat P.O. Muthani P.S. Bhabhua District- Kaimur
6. Lalita Devi Wife of Kalika Singh, resident of village- Satwati P.S. Nuwan District- Kaimur
7. Kamala Devi Wife of Narsingh Singh, resident of village Sabarudih P.O. Khanethi P.S. Sonhan District- Kaimur
8. Vindhyaachal Devi Wife of Kamala Singh, resident of village Chilibili P.O. And P.S. Kargahar District- Kaimur
9. Sonamati Devi Wife of Nandkeshwar Singh, resident of village- Barupar P.S.- Mohania District- Kaimur
10. Most. Phuljhari Kuer Wife Of Late Sheo Kumar Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
11. Vijay Singh Son Of Late Shio Kumar Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
12. Tuna Singh Son Of Late Shio Kumar Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
13. Shiv Mandir Singh Son Of Late Shio Kumar Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
14. Manoj Singh Son Of Late Shio Kumar Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
15. Shio Person Singh Son Of Late Hanuman Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
16. Sudarasan Singh Son Of Late Hanuman Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
17. Rambachan Singh Son Of Late Hanuman Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
18. Shiv Bachan Singh Son Of Late Hanuman Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
19. Shiv Muni Singh Son Of Late Hanuman Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
20. Lalan Singh Son Of Late Ramchela Singh resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur
21. Most. Fekana Kuer Wife Of Late Jokhan Singh, resident of village- Sasana P.O. Dangari P.S. Kudara District- Kaimur

.... Respondent/s



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Appearance :

For the Petitioner/s : Mr. Arabind Nath Pandey, Adv.

For the Respondent/s : Mr. Ranjan Kumar Dubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-11-2018

Petitioner before this Court is plaintiff in Title Suit No. 469 of 2010 pending in the court of Sub-Judge-I, Bhabhua at Kaimur. She has filed this writ application for quashing the order dated 27.09.2013 whereby and whereunder the learned court below abated the suit in view of provision of section 4 (c) of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.

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

3. The petitioner filed the aforesaid suit on the file of Sub-Judge for cancellation of registered sale deed nos. 10414 and 10415 dated 22.11.2010 which were allegedly executed by Jokhan Singh in favour of the defendant no. 1 and also for partition of suit property among the parties.

4. It appears that the plaintiff in her plaint has alleged that the land in dispute is joint family property. The father of the plaintiff was an old person and he had lost his consciousness since last six months before his death. The defendants taking advantage of the



mental condition of her father, fraudulently brought into existence the said deeds by committing fraud and forgery. The father of the plaintiff died only after two days of execution and registration of said sale deeds. He further submitted that it is the civil court who has jurisdiction to decide the issue relating to cancellation of document which have been allegedly brought into existence by committing fraud. The court below committed error in holding the suit abated in view of provision of section 4 (c) of Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 and so the impugned order is fit to be set aside.

5. The learned counsel for the respondents on the other hand submitted that the plaintiff has alleged that the document in question is illegal and void and also for partition of suit property and so the court below has rightly abated the suit. The court below has not committed any jurisdictional error and so this application is fit to be dismissed.

6. On going through the averment made in the plaint, I find that the plaintiff is only daughter of her father. The defendants are brother and nephews of the father of plaintiff. In the plaint, she has specifically alleged that his father was mentally ill and was unconscious since last six months and had lost his memory. The defendants in collusion with each other fraudulently created two



registered sale deeds by committing fraud and forgery. Her father neither received any consideration money nor executed any document nor affixed his thumb impression and so the plaintiff filed the suit for cancellation the said sale deeds. This document is voidable document and it is within the jurisdiction of civil court to cancel/set aside such document. In this regard, I would like to refer the Full Bench decision of this Court passed in a case of Ramkrit Singh and others Vs. State of Bihar and others reported in AIR 1979 Patna 250 where this Court has considered about jurisdiction of civil court in deciding such type of issue. It has been held that except where there is necessity to set aside a document after calling for it, there suit will lie, that is the exclusive jurisdiction of the Civil Court. In other words, if a document has to be set aside, Civil Suit is maintainable but a mere declaration of title or a mere declaration that a document is void that can be done by the consideration authority. Same view has been expressed in a case decided by this Court in Ram Bhajan Mahto vs. Bam Mahto and others reported in 2007 (4) PLJR 649.

7. In the case at hand I find that the plaintiffs have sought relief for cancellation of two sale deeds on the ground of fraud and forgery which requires determination only after recording the evidence of the parties. Such type of case cannot be decided by the consolidation court.



8. In view of above facts, the impugned order dated 27.09.2013 holding the suit abated is set aside and the trial court is directed to proceed with the suit.

9. This writ application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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