

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9816 of 2013

-
-
1. Sri Vishwamurti Shahi S/O Anand Bhairav Lal Shahi resident of Village- Jagarnathpur Dokara, P.S. Saraiya, District- Muzaffarpur
 2. Sri Asutosh Shahi S/O Sri Anand Bhairav Lal Shahi resident of Village- Jagarnathpur Dokara, P.S. Saraiya, District- Muzaffarpur

... .. Petitioners

Versus

1. Mahesh Kumar Karjee S/O Late Jamuna Karjee resident of Flat No. 7 Hf- 6/44, Bahadurpur Housing Colony, P.S. Agamkuan, District- Patna- 800026
2. Jivesh Kumar son of Mahesh Kumar Karjee resident of Flat No. 7 Hf- 6/44, Bahadurpur Housing Colony, P.S. Agamkuan, District- Patna- 800026
3. Devesh Kumar son of Mahesh Kumar Karjee resident of Flat No. 7 Hf- 6/44, Bahadurpur Housing Colony, P.S. Agamkuan, District- Patna- 800026
4. Brajesh Karjee son of Mahesh Kumar Karjee resident of Flat No. 7 Hf- 6/44, Bahadurpur Housing Colony, P.S. Agamkuan, District- Patna- 800026
5. Madhaves Kumar son of Mahesh Kumar Karjee resident of Flat No. 7 Hf- 6/44, Bahadurpur Housing Colony, P.S. Agamkuan, District- Patna- 800026
6. Chandra Kiran Singh D/o Anand Bhairav Lal Sahi, Wife of Dr. Bal Kiran Singh Resident of Dharfari House, Club Road, Muzaffarpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate
For the Respondent/s : Mr. Anshuman Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date : 20-11-2018

Defendants of Partition Suit No.37 of 1994 pending in the court of learned Subordinate Judge V, Muzaffarpur have filed this writ application for quashing the orders dated 30.06.2011 and 21.03.2013. The court below as per impugned order dated 30.06.2011 closed the evidence of these petitioners and fixed the case for argument. The court below further refused to recall the said order and imposed exemplary cost of



Rs.5,000/- on the petitioners as per order dated 21.03.2013.

2. Heard both sides and perused the record.

3. The respondents before this court filed the aforesaid partition suit claiming $\frac{1}{2}$ share in the suit property. The defendants appeared and filed written statement. When the case was pending for evidence of defendants, nobody appeared on 30.06.2011 in consequence of which evidence of these petitioners was closed. The petitioners filed a petition to recall the said order which was rejected and cost of Rs.5,000/- was imposed as per order dated 21.03.2013.

4. The learned counsel for the petitioners submits that a petition was filed on behalf of the defendants to call for Register II from the District Sub-Registrar Office. The learned court below allowed the said petition as per order dated 18.01.2006 and directed the office to requisition the said document. The said order was not complied by the office and the case remained pending for complying the said order. The court below as per order dated 05.09.2006 directed the defendants to file requisites for issuance of demand letter. The documents which were called for from registration office are very important documents in order to decide the issue. The learned court below without complying its earlier direction has



closed the evidence of defendants which has prejudiced the petitioners.

5. The learned counsel for the respondents, on the other hand, submitted that the court below considering the dilatory tactics of the petitioners has rightly closed their evidence and refused to recall the order and imposed cost of Rs.5,000/- for expeditious trial and so this writ application is fit to be dismissed.

6. On going through the materials on record, I find that the respondents have filed the suit for declaration of their title and also for declaration that the gift deed dated 31.12.1977 in the name of defendant no.2 and the plaintiff and gift deed dated 31.01.1982 in the name of defendant no.3 as void and do not confer any title on the donees. The petitioners in order to exhibit the deed of gift filed a petition to call for the register from the registration office. The said order was not complied for a long period and suddenly the case of the defendants was closed. The said document appears essential for adjudicating the issue involved in the suit. The court below has closed the evidence of the defendants simply for the reason that no one appeared for the defendants or produced any witness on the date fixed for evidence although the matter relating to calling for



documents from registration office was pending.

7. In view of above facts and also for the ends of justice, the impugned orders closing the evidence of defendants and also refusing to recall the said order are set aside and this writ application is allowed subject to payment of cost of Rs.10,000/- to the plaintiff by the petitioners before the court below. The court below is directed to give an opportunity to the petitioners to adduce evidence and dispose of the suit preferably within six months.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.11.2018
Transmission Date	

