

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6404 of 2011

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1. Md.Anwar Late Skh. Shamsuddin R/O Village- Kasba Siwan, Mohalla-
Chauk Bazar, Pargana Bara, P.O+ P.S And District- Siwan
2. Md.Akhatab Late Skh. Shamsuddin R/O Village- Kasba Siwan, Mohalla-
Chauk Bazar, Pargana Bara, P.O+ P.S And District- Siwan
3. Md.Shahid Late Skh. Shamsuddin R/O Village- Kasba Siwan, Mohalla-
Chauk Bazar, Pargana Bara, P.O+ P.S And District- Siwan
4. Md.Khalid Late Md.Zafar R/O Village- Kasba Siwan, Mohalla- Chauk
Bazar, Pargana Bara, P.O+ P.S And District- Siwan
5. Md.Sazid Late Md.Zafar R/O Village- Kasba Siwan, Mohalla- Chauk
Bazar, Pargana Bara, P.O+ P.S And District- Siwan
6. Zakiya Bano @ Bibi Jakia Khaliq Late Md.Zafar R/O Village- Kasba
Siwan, Mohalla- Chauk Bazar, Pargana Bara, P.O+ P.S And District- Siwan
7. Sahiba Bano Late Md.Zafar R/O Village- Kasba Siwan, Mohalla- Chauk
Bazar, Pargana Bara, P.O+ P.S And District- Siwan
8. Bibi Shahiba Bano D/O Late Md.Zafar R/O Village- Kasba Siwan,
Mohalla- Chauk Bazar, Pargana Bara, P.O+ P.S And District- Siwan

.... Petitioner/s

Versus

1. Bibi Samaiya Late Md.Shoaib R/O Village- Kasba Siwan, Mohalla-
Chauk Bazar, Pargana Bara, P.O+ P.S And District- Siwan

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant, Advocate
Mr. Navin Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

4 07-02-2018 This writ application has been filed for setting aside the

order dated 05.02.2011 passed by learned Subordinate Judge-I,

Siwan in Title Suit No.213 of 2003 whereby and whereunder the

learned court below accepted the second written statement filed on

behalf of defendant no.6.

2. Heard and perused the record.

3. It appears that the plaintiffs filed the aforesaid suit for

partition claiming share to the extent of half in the suit property



mentioned in Schedule of the plaint. The defendants appeared and filed a new written statement with a petition praying therein to accept the same. The said second written statement after hearing was accepted by the court below.

4. The learned counsel for the petitioners submits that the court below has committed jurisdictional error in accepting the second written statement without assigning any reason. The petitioners (plaintiffs) filed an injunction petition on 09.02.2007 praying therein to restrain the defendants from transferring the suit property during pendency of the suit. The defendant nos.5 and 6 filed rejoinder on 02.03.2007 to the said injunction petition. The matter was heard and injunction was allowed in favour of the petitioners (plaintiffs). Against the said order of injunction, the defendant nos.5 and 6 filed Miscellaneous Appeal No.06 of 2009 on 17.10.2010. The appeal was partly allowed. The petitioners filed C.W.J.C. No.18244 of 2010 before this Court. In the said writ, this court as per order dated 10.11.2010 restrained all the respondents from alienating or encumbering the suit property or any portion thereof in any manner whatsoever during pendency of the interlocutory application. After seven years of institution of suit the court below accepted the written statement of defendant nos.5 and 6 as per impugned order dated 05.02.2011. The court below while accepting the written statement has observed that the



advocates have denied to have filed any vakalatnama. I find that the defendants had appeared before the court below on 06.09.2004 by filing vakalatnama and prior to filing of the said vakalatnama, they had filed vakalatnama of another advocate on 20.12.2003. Thereafter the defendants filed third vakalatnama on 29.04.2010. The court below made enquiry as regards her appearance on earlier occasion by filing two vakalatnamas and came to the conclusion that she had not filed any vakalatnama. These defendants had contested the injunction matter in the year 2004. The defendants had filed miscellaneous appeal before the District Judge in the year 2009. These two documents show that the defendants are contesting the suit since 2004. The respondents have not denied this fact that they had not contested the injunction matter or filed any appeal before the District Judge. The court below without assigning any reason has accepted the written statement and thereby committed jurisdictional error.

5. In view of above facts and circumstances, the impugned order accepting the second written statement without making any enquiry is set aside.

6. This writ application is, accordingly, allowed.

(Sanjay Kumar, J)

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