

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5169 of 2014

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1. Baijnath Prasad
 2. Sheonath Prasad Both Are Sons Of Late Sudin Prasad Both Are Resident Of Village- Baratpur, Mohalla- Ahari, P.O.+P.S.- Aurangabad, District- Aurangabad (Bihar). At Present Resident Of Village- Sadipur Dihari, P.O.- Purnadih, P.S.- Obra, District- Aurangabad (Bihar)

.... Petitioners

Versus

1. Smt. Sima Devi Wife Of Sri Manoj Kumar Singh
2. Manoj Kumar Singh, Son Of Sri Ramjee Singh
3. Raju Singh @ Guddu Singh Son Of Sri Ramjee Singh
4. Shalu Kumari
5. Nisa Kumari Both Daughters Of Raju Singh All Are Resident Of Village- Rampur Baina, P.S.- Parasi, District- Arwal
6. Saguni Yadav Son Of Late Ram Bichch Yadav, Resident Of Village- Katharua, P.O. + P.S.- Aurangabad, District- Aurangabad (Bihar)

.... Respondents

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Appearance :

For the Petitioners : Mr. Mrigendra Kumar, Advocate
Mrs. Kusum Kumari, Advocate
Mr. Mayank Vilochan, Advocate

For the Respondent no.6 : Mr. Anirudh Kumar Verma, Advocate
Mr. Vyash Kumar Mishra, Advocate

For the Respondent nos 1 to 5 : Mr. Dharendra Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

7 12-03-2018 Petitioners are plaintiff of Title Suit No.57 of 2006 pending in the court of Sub Judge-I, Aurangabad. They have filed this application for setting aside the order dated 29.01.2013 whereby and whereunder their prayer to admit the documents filed on their behalf was rejected. They have further prayed to set aside the order dated 28.01.2014 whereunder the petitioners' petition to review the order dated 29.01.2013 was rejected.

2. Heard learned counsel for the petitioners and the



respondents.

3. The learned counsel for the petitioners submits that inadvertently three documents which are registered sale deed dated 20.07.2001, rent receipt and a certified copy of judgment and decree passed in Partition Suit No.167 of 2005/51 of 2010 passed by Sub Judge-VI were not marked as exhibits. The said documents were filed before the court below at the initial stage of hearing. These documents are very basis of the suit and all the defendants are aware with those documents.

4. The learned counsel for the respondents on the other hand submits that the petitioners have not explained the reason for not getting those documents marked as exhibits. The evidence of both the parties have concluded and at the time of argument, the petitioners have filed petition only to prolong the disposal of the suit and so the court below has rightly refused to admit those documents.

5. On perusal of documents on record, I find that the plaintiffs have asserted his title on the basis of registered sale deed dated 20.07.2001. The plaintiffs have stated that one Tilakdhari Yadav was the owner of land measuring 14 decimals of plot no.586. He gave this land to Sohrai Yadav by virtue of registered deed of exchange dated 19.11.1979. The said Sohrai Yadav



became owner of the said land and he got his name mutated in government Rasta. The said Sohrai Yadav having been need of money sold the entire 14 decimals of land of plot no.566 to the plaintiff by virtue of registered sale deed dated 20.07.2001. The plaintiff came in possession and also got his name mutated over the same. The contesting defendants filed their written statement and denied the title of the plaintiffs. They have stated that the sale deed dated 20.07.2001 executed by Sohrai Yadav in favour of the plaintiffs is void collusive and not operating as the said Sohrai Yadav had no right to transfer the dispute land. The defendants have further stated that the deed of exchange dated 19.11.1979 is also illegal and invalid. Thus, I find that both the parties are aware with the said documents. The execution of sale deed dated 20.07.2001 is not denied rather the defendants assert that the said documents is collusive. It is not in dispute that the petitioners had filed those documents on 09.03.2007. The trial of suit commenced after filing of the said documents. The vendor of the plaintiff has been examined as PW-1 Sohrai Yadav. This witness during his evidence has admitted that he had executed the sale deed in favour of the plaintiffs. The said witness was cross-examined by the defendants. Both the parties have closed their evidence and the suit is pending for argument. The court below considering the



delay on the part of the petitioners has rejected the petition observing that no satisfactory explanation has been given on their behalf.

6. The Hon'ble Apex Court in 2011(2) PLJR 138 at para-9 has observed that Section 151 of the Code provides that nothing in the Code shall be deemed to limit or other were affect the inherent powers of the Code to make such orders as may be necessary for the ends of justice or to prevent the abuse of the proceed of the court. In the absence of any provision providing for the opening of evidence or recall of any witness for further examination or cross-examination for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence. It is not in dispute that these documents were filed much before the commencement of evidence of the parties. The another document is rent receipt with respect to the land which was acquired by aforesaid sale deed dated 20.07.2001. The third document is certified copy of judgment and decree which is public document. The said documents are already on record since before commencement of trial and so for the ends of justice, the impugned order refusing to admit those documents is set aside and the court below is directed



to accept those documents, i.e., sale deed dated 20.07.2001, rent receipt and give opportunity to the petitioners to get those documents exhibited. The third document which is the certified copy of judgment and decree being public document is ordered to be marked exhibited.

7. This application is accordingly allowed subject to payment of cost of Rs.2,000/- to the contesting respondents/defendants before the court below.

(Sanjay Kumar, J)

B.Kr./-

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