

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2016 of 2012

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Rudal Singh son of late Bhardul Singh, resident of village- Belwa Madho, P.O.-
Belwa Madho, P.S.- Kotwa, District- East Champaran.

Defendant no.1 (Defendant 1st set)

.... Petitioner/s

Versus

1. Unti Devi wife of Kanahya Singh, residents of village- Belwa Madho, P.O.-
Belwa Madho, P.S.- Kotwa, District- East Champaran.

Plaintiff-Respondent 1st set.

2. Kanahya Singh son of late Bhardul Singh, residents of village- Belwa Madho
P.O.- Belwa Badho, P.S.- Kotwa, District- East Champaran.

Defendant no. 2 (Defendant 1st set.)

Respondent 2nd set.

3. Umesh Singh son of Anirudh Singh, residents of village- Patti Jasauli, P.O.-
Patti Jasauli, P.S.- Kotwa, District- East Champaran.

4. Sujay Kumar (minor) son of Shambhu Singh under the natural guardianship of
his father Shambhu Singh.

5. Raju Kumar (minor) son of Prabhu Singh under the natural guardianship of his
father Prabhu Singh.

6. Munna Kumar (minor) son of Baleshwar Singh under the natural guardianship
of his father Baleshwar Singh.

7. Shambhu Singh son of Mahendra Singh.

8. Baleshwar Singh son of Mahendra Singh.

9. Prabhu Singh son of Bhola Singh.

10. Rupkali Devi wife of Shiv Pujan Singh.

11. Raj Kishore Singh son of Yogendra Singh.

All are residents of village - Belwa Madho, P.O.- Belwa Madho, P.S.- Kotwa,
District- East Champaran.

Defendant 2nd set/Respondent 3rd set.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar-III, Advocate

For the Respondent/s : Mr. Ved Prakash Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-08-2018

The petitioner is defendant of Partition Suit No. 288 of
1997. He has filed this application for setting aside the order dated
04.04.2009 whereby and whereunder the prayer of the petitioner to



recall the order dated 27.05.2003 and accept his written statement was rejected.

2. Heard both sides and perused the record.

3. It appears that the plaintiff no. 1, who is wife of defendant-respondent no. 2, filed the aforesaid suit for declaration of her title on the basis of registered deed of gift executed by her mother-in-law. She has further sought relief for carving out her share in the suit property to the extent of land covered by the registered deed of gift. The defendant-petitioner appeared in the suit and prayed for time to file written statement. The prayer of defendant was rejected and he was debarred from filing written statement as per order dated 27.05.2003. The defendant then filed a petition on 29.07.2003 to recall the said order and accept the written statement which was subsequently filed on his behalf. The court below while rejecting the prayer of defendant has observed that the petitioner has not produced any documents to justify the earlier adjournment which was given to him for obtaining certified copy. The petitioner admittedly is co-sharer of the husband of plaintiffs-respondents. He has challenged the genuineness of deed of gift executed by his mother. If the petitioner-defendant is debarred from filing written statement, he would be seriously prejudiced.



4. In the facts and circumstances of the case and for the ends of justice, the impugned order refusing to accept the written statement of defendant-petitioner is set aside, subject to payment of cost of Rs.3,000/- to the plaintiff-respondent before the court below.

5. This writ application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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