

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 727 of 2018

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1. Shyam Sunder Giri
 2. Bholu Giri
 3. Aanand Murti Giri
 4. Narain Giri All Sons of Late Ram Janam Giri
 5. Rupkali Kuer, Wife of Late Ram Janam Giri All Resident of Village-Obra, P.O. & P.S.- Obra, District- Aurangabad.

.... Petitioners

Versus

1. Ram Sewak Prasad Son of Gobardhan Prasad
2. Suraj Kumar Jaiswal
3. Abhay Kumar Jaiswal
4. Chintu, All Sons of Sri Ram Sewak Prasad, Resident of Village- Obra, P.O. & P.S.- Obra, District- Aurangabad.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Kumar Kaushlendra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 16-07-2018 Heard both sides.

The petitioners have filed this Civil Miscellaneous petition against the order dated 15.11.2017 passed in Mortgage Suit No.139 of 2001 by which the petition of the petitioners for bringing on record the original gift deed dated 17.04.1946 as evidence has been rejected. The petitioners are the plaintiffs in the Court below.

Learned counsel for the petitioners submits that Ramjanam Giri was the original plaintiff, who died during the pendency of the suit. The suit is filed for redemption of mortgage.



The plaintiffs are the legal heirs of Late Ramjanam Giri. Late Ram Gulam Giri died and thereafter his widow executed the registered deed of gift of entire land in favour of Ramjanam Giri and thereby Ramjanam Giri got the title over the land and orally mortgaged the suit land to the defendants. It is further submitted that Ramjanam Giri could not bring on record the original registered deed gift and the petitioners had no knowledge about the deed of gift. When the petitioners came to know the fact that gift deed is not brought on record the petitioners filed petition to bring on record the registered deed of gift as evidence but learned court below has rejected the petition on the ground that much delay has been caused without recording any finding with regard relevancy of the deed of gift.

On the other hand, learned counsel for the respondents submitted that the suit is of the year 2001. Ramjanam Giri died in the year 2004 and the plaintiffs were substituted in the year 2005. Now the suit is proceeding for argument of the defendants. At such a belated stage the plaintiffs should not be allowed to fill up their lacuna.

Having considered the submissions of both sides and from perusal of the record, I find that the plaintiffs filed the suit for redemption of mortgage. The plaintiffs claimed title and



possession over the land by virtue of registered deed of gift executed on 17.04.1946 in favour of ancestor of the plaintiffs. Ramjanam Giri, the father of plaintiffs no.1 to 4 filed the suit and stated about the devolution of title on him on the basis of registered deed of gift executed by the wife of Ram Gulam Giri but the plaintiffs could not know the fact about the gift deed. When the plaintiffs came to know that the gift deed is not brought on record then filed petition for bringing the same on the record in evidence. It appears that the Munsif, Daudnagar, Aurangabad has rejected the petition of the plaintiffs solely on the ground of delay without recording the finding with regard to relevancy of the case. It appears that the plaintiffs have stated that they got the property by virtue of deed of gift executed in the year 1946 and the deed of gift is basis of the suit. The plaintiffs could not know that the deed of gift was filed in the court of S.D.O., Daudnagar in the year 1954 and accordingly got the deed of gift from the court of S.D.O. and filed the same in the suit. The case of the defendants is based on oral sale deed. Thus, I find that the registered deed of gift is very relevant piece of evidence and the case of the plaintiffs is based on the same. Therefore, I find that the learned Munsif, Daudnagar, Aurangabad has erroneously and illegally rejected the petition of the petitioners for bringing the deed of gift on record as



evidence.

Accordingly, the order dated 15.11.2017 is set aside with direction to the court below to bring the deed of gift on record as evidence and proceed further in accordance with law.

(Prabhat Kumar Jha, J)

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