

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21725 of 2013

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Kameshwar Lal @ Kameshwar Lal Srivastav S/O Late Deodutt Lal Resident Of
Village- Ramasharh, Paharpur, Police Station- Sandesh, District- Bhojpur.

.... Petitioner/s

Versus

1. Dineshwar Prasad Srivastav S/O Late Deodutt Lal Resident Of Village-
Ramasharh Paharpur, Police Station- Sandesh, District- Bhojpur.
2. Motijharid Evi W/O Late Kadarnath Lal Resident Of Village- Paharpur, Police
Station- Sandesh, District- Bhojpur.
3. Rakesh Kumar Srivastav S/O Late Kadarnath Lal Resident Of Village-
Paharpur, Police Station- Sandesh, District- Bhojpur.
4. Himalay Raj S/O Late Kadarnath Lal Resident Of Village- Paharpur, Police
Station- Sandesh, District- Bhojpur.
5. Rupranjan Kumar S/O Late Kadarnath Lal Resident Of Village- Paharpur,
Police Station- Sandesh, District- Bhojpur.
6. Vishal Vikaram S/O Late Kadarnath Lal Resident Of Village- Paharpur, Police
Station- Sandesh, District- Bhojpur.
7. Bindhachal Devi W/O Ate Rajeshwari Prasad Resident Of Village-
Tarachak,P.O- Bargoan, P.S- Sandesh, District- Bhojpur
8. Pradeep Kumar Sinha S/O Late Rajeshwari Prasad Resident Of Village-
Tarachak,P.O- Bargoan, P.S- Sandesh, District- Bhojpur
9. Meena Devi W/O Pradeep Kumar Sinha Resident Of Village- Tarachak,P.O-
Bargoan, P.S- Sandesh, District- Bhojpur
10. Shanti Devi W/O Madan Mohal Lal Resident Of Village And P.O- Sultanpur,
Police Station- Jagdishpur, District- Bhojpur, Presently Mohalla- Neharu Nagar,
P.O- Ara, District- Bhojpur.
11. Kalawati Devi W/O Ravi Shankar Lal Resident Of Village And P.O- Ekwari,
P.S- Sahar, District- Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madan Jeet Kumar, Advocate

For the Respondent/s : Mr. Bhubneshwar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-06-2018

This application has been filed for quashing the order dated
24.08.2013 passed by learned Adhoc Additional District Judge-III,
Bhojpur at Ara in Title Appeal No.15 of 1995 whereby and
whereunder the learned Additional Judge refused to admit the
certified copy of sale certificate issued in Execution Case No.127 of
1997.



2. Heard learned counsel for the petitioner and the respondents.

3. The petitioner happens to be the descendant of plaintiff Sumitra Kuer who filed Title Suit No.153 of 1986 against the defendants alleging inter-alia that one Murlidhar Lal was her father who died leaving behind his son Kedarnath Lal and a daughter Sumitra Kuer (plaintiff). After the death of Murlidhar Lal and his wife Sumitra Kuer filed a suit for partition claiming 1/2th share in the property of Murlidhar Lal. The said suit after contest was dismissed. Title Appeal No.15 of 1995 was filed by the plaintiff. During the pendency of title appeal, the petitioner being heirs of appellant filed a petition praying therein to admit the sale certificate in evidence under Order XLI to 27 read with Section 151 CPC which after hearing was dismissed.

4. The learned counsel for the petitioner submits that the said sale certificate is a public document which was issued by executing court in Execution Case No.127 of 1997 (Md. Wahid Asharaf vrs. Ramkrit Lal). This document is very important in deciding the issue involved in the appeal. The said Murlidhar Lal had died after passing of Hindu Women's Right to Property Act. The respondent/defendant asserted that the said Murlidhar Lal died much earlier to 1936 and so the plaintiff is not entitled to any share in the suit property. Accordingly to learned counsel, the said Murlidhar Lal was party to the said execution case which was filed in the year 1937.



This document is relevant to establish the date of death of Murlidhar Lal. The said document was not in the knowledge of the appellant or his ancestor. The appellant got knowledge about the said document during the pendency of the appeal and after obtaining certified copy of said document, has filed the application bonafide without causing any delay.

5. Learned counsel for the respondents on the other hand opposed the submission. It has been submitted that the appeal was filed in the year 1995 but the application for admitting the said document has been filed after more than one decade and so the same is fit to be quashed.

6. On going through the submissions of both the parties, I find that the document in question is a public document which was issued by a civil court. The genuineness of this document has not been disputed by the respondent. The only objection of respondent is that it has been filed after a long delay of disposal of the suit. The copy of documents on record shows that the certified copy was obtained in the year 2009, i.e., after filing of the appeal. The said execution case was filed in the year 1937 against Murlidhar Lal and others. The point in dispute relate to determination of date of death of said Murlidhar Lal. The document in question is a public document. In this regard, learned counsel for the petitioner cited ruling reported in **2013(1) PLJR page 60** wherein the Hon'ble Apex Court at para 38 has observed as follows:

“An application under Order XLI Rule 27 **is to be considered**



at the time of hearing of the appeal on merit so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court.”

7. Admittedly the appeal has not been taken up for final hearing. The court below without assessing the relevancy of this document has refused to admit the same without going into the merit of appeal.

8. In view of the above facts and settled principle of law as stated above, the impugned order refusing to admit the sale certificate is set aside and this application is allowed. The court below is directed to consider the document in the light of principles as laid down by the Hon’ble Apex Court.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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