

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.786 of 2014

In
Civil Revision No.2198 of 2008

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1. Ram Udgar Rai S/o late Ramdeo Ray
 2. Sanjeev Kumar
 3. Rajeev Kumar, both sons of Ram Udgar Ray.
 4. Kala Devi Wife of Ram Udgar Ray,
All residents of Village- Akhtiarpur Chaknoor, P.O.-
Raghunathpur, P.S.- Samastipur (Mufassil), Distt.-Samastipur.

... .. Petitioner/s

Versus

1. Jawahar Ray Son of late Ramdeo Ray
2. Brahmdeo Ray Son of late Manki Ray
3. Smt. Chumni Devi Wife of Brahmdeo Ray
4. Satyadeo Ray, son of late Manki Ray
5. Baleshwar Ray
6. Kameshwar Ray
7. Ramjatan Ray
All three sons of late Pragash Ray, residents of village- Akhtiarpur Chaknoor,
Tola Dadpur, P.O. Rahmatpur, P.S. Samastipur Mufassil, Distt.- Samastipur.
8. (a) Meena Devi wife of Ram Sagar Rai, daughter of Deo Narayan Rai and late
Shakunti Devi, resident of village Lalpur, Police Station+Sub Division-
Rosera, District- Samastipur.
(b) Tej Narayan Rai Son of late Shakunti Devi and son of Deo Narayan Rai,
resident of village- Mordilva, Police Station+District- Samastipur.
9. Bimal Devi wife of Ramchandra Ray, resident of village- Shapathpura, P.O.-
Chandanpatti, P.S.-Sankara, Distt.- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Choudhary Shyam Nandan, Adv.
For the Respondent/s : Mr. Sushil Kumar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 06-12-2018

Defendants of Title Suit No. 208 of 2006 pending in
the court of Civil Judge, Senior Division-I Samastipur have filed
this writ application for quashing the order dated 28.11.2008
whereby and whereunder the learned court below directed the



petitioners (defendant 1st party) to adduce evidence first before the evidence of plaintiff.

2. Heard learned counsels for the petitioners and perused the record.

3. It appears that the respondent no. 1 filed the aforesaid suit for declaring the sale deed no. 14345/03, deed of gift no.8531/04 and deed no. 11690/04 executed by Brahmdeo Rai as illegal, forged, fabricated, without consideration, ineffective and not binding on the plaintiffs besides some other reliefs. The defendants appeared and filed written statement. They denied the status of joint family and claimed separation and partition. The plaintiff filed a petition to direct the defendants to adduce evidence first as the defendants have denied the case of jointness. The learned court below after hearing both sides allowed the petition filed by plaintiff and directed the defendants to adduce evidence considering the fact that the defendants have denied existence of jointness between the parties.

4. On going through the pleadings made in the plaint, I find that the plaintiffs have asserted that the defendants brought into existence some documents and prayed to declare three documents as forged, fabricated, fraudulent and not binding on the plaintiffs. The court below has, thus, erred in looking into the



pleading of the plaintiff and the fact that onus lies on the person who asserts the documents as forged and fabricated. The plaintiffs have sought relief to set aside the said document and so he is required to adduce evidence first. The issue as regards jointness among the parties has to be considered only after recording evidence of both the parties

5. In view of above facts, the impugned order directing the defendants to adduce evidence first is not sustainable and is accordingly set aside.

6. This writ application is allowed.

(Sanjay Kumar, J)

mkchy/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.12.2018
Transmission Date	N/A

