

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.387 of 2018

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1. Vijay Shaw son of Tapeswar Sah, resident of Mohalla Kothi Sahid, Sasaram, P.O. & P.S. Sasaram, District Rohtas, through his Power of Attorney Holder, Rajesh Kumar Shaw, son of Sri Keshav Prasad Shaw, Advocate, residing at 92 Dr. Lalmohan Bhattacharjee Road, P.S. Entally, Kolkata-700014, West Bengal.

2. Keshav Prasad Shaw, son of Late Kapoor Chand Sha, resident of Mohalla Kothi Sahid, Sasaram, P.O. & P.S. Sasaram, District Rohtas, through his Power of Attorney Holder, Dilip Kumar Shaw, son of Sri Keshav Prasad Shaw, Advocate, residing at 92 Dr. Lalmohan Bhattacharjee Road, P.S. Entally, Kolkata- 700014, West Bengal.

.... Petitioners

Versus

1. Lalit Kumar
2. Ashok Kumar.
3. Rajeshwar Singh. All sons of Late Ram Prasad Singh.
4. Most. Shila Kuar, wife of Late Ramnaresh Singh.
5. Mritunjay Kumar Singh, son of Late Ramnaresh Singh.
6. Smt. Meena Kumari Devi.
7. Smt. Rita Kumari Devi.
8. Smt. Manju Kumari Devi, All daughters of Late Ramnaresh Singh.
9. Sanjay Kumar Singh,
10. Sachin Kumar Singh, Both sons of Lalit Kumar Singh.
11. Sidheshwar Singh, son of Rambilas Singh.
12. Rakesh Kumar, son of Rambilas Singh.
13. Jyoti Kumar, minor son of Ashok Kumar through the father and natural guardian Ashok Kumar.
14. Child not named, minor son of Rameshwar Singh through Rameshwar Singh father and natural guardian.
All residents of Mohalla Baulia G.T. Road, Sasaram, District Rohtas,
15. Ghura Kashap, son of Manu Kashp.
16. Khakhnu Ahir, son of Kalicharan Ahir. Both residents of Mohalla Khilanganj, P.O. & P.S. Sasaram, District Rohtas.
17. Harihar Mahto, son of Late Raghuvir Mahto.
18. Lalbabu Mahto, son of Doma Mahto.
19. Saryuj Mahto, son of Late Sabbir Mahto.
All residents of village Nuranganj, Sasaram, P.O. & P.S. Sasaram, District Rohtas
20. Bhagwati Prasad, son of Late Gokhul Sah, resident of Mohalla Khilanganj, Sasarm, P.O. & P.S. Sasaram, District Rohtas.
21. Lalti Devi.
22. Pyaro Devi,
Both daughters of Late Tapehswar Sah and both residents of mohalla Kothi Sahid, P.O. & P.S. Sasaram, District Rohtas.
23. Dharmvir Sah, son of Late Tarachand Sah.
24. Most. Saraswati kuar, wife of Late Tarachand Sah.
25. Smt. Veni Devi, wife of Baleshwar Singh,
26. Smt. Basanti Devi, wife of Nagendra Sah.
All residents of mohalla Kothi Sahid, P.O. & P.S. Sasaram, District Rohtas.
27. Dr. Rajbansh Singh, son of Ramnaresh Singh, resident of village



Chamaraha, P.O. Torni, P.S. Shivsagar, District Rohtas.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

3 25-08-2018 Heard both sides.

The petitioners filed this civil miscellaneous petition under Article 227 of the Constitution of India to quash the order dated 12.10.2017 passed by learned 1st Subordinate Judge, Rohtas at Sasaram in Revenue Title Appeal No.50 of 1975 and recall the order dated 20.04.2015 by which the suit was fixed for ex parte hearing.

The petitioners are the appellants in Revenue Title Appeal No.15 of 1975. The dispute arose between Tarachand Sah and Keshav Prasad Sah on one hand and Ram Prasad Singh on the other hand. Respondent Nos.15 to 20 are also contesting respondents. A proceeding under Section 106B of the B.T. Act was initiated against Tarachand Sah and Keshav Prasad Sah and the same was decided in their favour. The petitioners preferred appeal being Title Appeal No.50 of 1975. During the pendency of the appeal, Ram Prasad Singh died and 14 heirs were substituted as respondent Nos.1 to 14. Dr. Rajbansh Singh, respondent No.27



appeared in Court on 14.07.2014 with a power of attorney said to have been executed by respondent Nos.1 to 4 and 11. When the petitioner disputed the genuineness of the execution of power of attorney, learned Sub Judge vide order dated 17.03.2017 directed the persons who are said to have executed the power of attorney to appear in Court with the documents showing that they have in fact, executed the power of attorney in favour of Dr. Rajbansh Singh authorized him to do the pairvi on their behalf but on 30.08.2017, learned Sub Judge on the petition of Dr. Rajbansh Singh without recalling the order dated 17.03.2017 allowed Dr. Rajbansh Singh, the power of attorney holder to do needful pairvi on behalf of executor of power of attorney. On the subsequent petition filed by the power of attorney holder, the appeal fixed for ex parte hearing is set aside by the impugned order.

Mr. S.S.Dvivedi, learned senior counsel for the petitioners submits that the order dated 30.08.2017 for allowing Dr. Rajbansh Singh, the power of attorney holder to appear and do the needful pairvi on behalf of respondent Nos.1 to 4 and 11 has already been set aside, therefore, the subsequent order for recalling the appeal by which the appeal was fixed for ex parte hearing is illegal.

I find that since the acceptance of the power of attorney holder without testifying the execution of power of attorney and



non-appearance of the executor of power of attorney as directed by learned Sub Judge I vide order dated 17.03.2017, the power of attorney holder was allowed to do needful pairvi on behalf of respondent Nos.1 to 4 and 11 and that order has already been set aside. Therefore, the subsequent order at the instance of the power of attorney holder to recall the order fixing the appeal for ex parte hearing is illegal. Accordingly, the order dated 12.10.2017 is set aside and the matter is remitted to the Court below to pass order afresh in accordance with law after complying the order dated 17.03.2017 passed by the Court.

Thus, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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