

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1975 of 2017

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1.Vijay Shaw @ Vijay Gupta son of late Tara Chand Shaw, 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, @ Keshav Gupta son of Late Kapoor Chand Shaw, 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 fo 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.

.....Respondents

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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

4 25-08-2018 Heard Mr. S.S.Dvivedi, learned senior counsel for the

petitioners and Mr. K.N.Choubey, learned senior counsel for the

respondents.

The petitioners have filed this civil miscellaneous
petition for quashing the order dated 30.08.2017 passed by 1st Sub
Judge, Rohtas at Sasaram in Revenue Title Appeal No.50 of 1975
by which the learned Sub Judge allowed the power of attorney
holder-respondent No.27 to do the needful pairvi on behalf of
respondent Nos.1 to 4 and 11 after recalling the ex parte order
passed against the respondent Nos.1 to 14.

Learned counsel for the petitioners submits that the
dispute arose between Tarachand Sah and Keshav Prasad Sah on
one hand and Ram Prasad Singh on the other hand. A proceeding
under Section 106B of the B.T. Act was initiated and the same
was decided against Tarachand Sah and Keshav Prasad Sah. They
preferred Revenue Title Appeal No.50 of 1975. The appeal remained



pending since 1975 on account of lack of lower court records but the record has not yet been received. During the pendency of the appeal, Ram Prasad Singh died and his heirs and legal representatives were substituted vide order dated 07.01.2013. When the respondents made efforts to change the status of the disputed land, the petitioners filed petition to hand over a dasti summon so that they may search out the records. Summons were also issued to the respondents 1st set, the substituted legal heirs for their appearance but when nobody appeared, the case was fixed for ex parte hearing against them. On 16.06.2015, one Dr. Raj Bansh Singh, respondent No.27 filed petition that respondent Nos.1 to 4 and Sidheshwar Singh have executed a power of attorney in his favour for making pairvi in the litigation. It is further submitted that the power of attorney holder filed appearance on 14.07.2014 but due to mistake, he could not file a petition for grant of permission from the Court to permit him to appear on behalf of respondent Nos.1 to 4 and 11 who executed power of attorney in his favour. The petitioners filed rejoinder disputing the genuineness of the power of attorney said to have been executed by respondent Nos.1 to 4 and 11. It is further submitted that learned 4th Sub Judge vide order dated 17.03.2017 directed the persons who executed the power of attorney to appear



in Court and testify their signatures as well as the power of attorney but the learned Sub Judge allowed the petition of the petitioner-power of attorney holder to do needful pairvi without testifying the power of attorney executed by respondentNos.1 to 4 and 11.

Mr. K.N.Choubey, learned senior counsel for the respondent No.27 submits that the order impugned is a formal order and even if the earlier order passed by the learned Sub Judge I on 17.03.2017 by which the executor of power of attorney were directed to appear in Court with the documentary evidence in order to testify the genuineness of the power of attorney, the order is not fit to be interfered with in supervisory jurisdiction under Article 227 of the Constitution of India as only the power of attorney holder was directed to do the needful pairvi on behalf of executor of power of attorney but I find no force in the submission of the learned counsel for the respondent No.27, who is contesting respondent, on the simple ground that vide order dated 17.03.2017, learned Sub Judge has doubted the genuineness of the power of attorney executed by respondent Nos.1 to 4 and 11 and consequently, directed the executant of the power of attorney to appear in Court and put their signature and also testify whether they have executed the power of attorney in favour of respondent



No.27 but by the impugned order, the learned Sub Judge has given go-by to the earlier order passed by his predecessor and allowed the petition of the power of attorney holder to do the needful pari passu on behalf of respondent Nos.1 to 4 and 11 without testifying the genuineness of execution of power of attorney in favour of respondent No.27. Therefore, I find that the order suffers from illegality.

Accordingly, the order dated 30.08.2017 is set aside and the matter is remitted to the court below to pass order afresh in accordance with law after taking into account the facts and the order dated 17.03.2017.

Thus, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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